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NOTICE

The undermentioned Gazettes of India Extraordinary were published upto the 27th October, 1959:—

Issue No.	No. and date	Issued by	Subject
154	S. O. 2361, dated 24th October, 1959.	Ministry of Commerce & Industry.	Amendment in Notification No. 14(1)-Tex (A)/59, dated 25th September, 1959.
155	S. O. 2362, dated 26th October, 1959.	Election Commission, India.	Amendment in Notification No. 56/I/59, dated 26th September, 1959.
156	S. O. 2430, dated 27th October, 1959.	Ministry of Information & Broadcasting.	Approval of film specified therein.

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

PART II—Section 3—Sub-section (ii)

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administrations of Union Territories).

ELECTION COMMISSION, INDIA

New Delhi, the 23rd October 1959

S.O. 2434.—It is hereby notified for general information that the disqualification under clause (c) of section 7 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the person whose name and address are given below, as notified under notification No. KL-P/154/57(82) dated the 27th August, 1957, has been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section of the said Act:—

Shri R. Velayudhan,
North Kaloor,
Ernakulam (Kerala).

[No. KL-P/154/57(82-R)/18573.]

New Delhi, the 28th October 1959

S.O. 2435.—It is hereby notified for general information that the disqualification under clause (c) of section 7 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the person whose name and address are given below, as notified under notification No. KL-P/154/57(81) dated the 27th August, 1957, has been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section of the said Act:—

Shri Thomas, Koduvathu Pandinjara Madhom, Malekavu Kara, Kolladu, Kottayam.

[No. KL-P/154/57(81-R), 18921.]

By order,

K. S. RAJAGOPALAN, Under Secy.

New Delhi, the 28th October 1959

S.O. 2436.—In pursuance of sub-section (6) of Section 116A of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the decision of the High Court of Judicature at Allahabad given on the 21st August, 1959, on an appeal from the order dated the 9th March, 1959, of the Election Tribunal, Allahabad.

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
CIVIL SIDE

CIVIL APPELLATE JURISDICTION

Dated Allahabad the 21st August, 1959.

PRESNT:

The Hon'ble R. N. Gurtu—Judge.

And

The Hon'ble S. N. Dwivedi—Judge.

FIRST APPEAL No. 161 OF 1959

First Appeal against the judgment of Sri K. K. Banerji, Member, Election Tribunal, Uttar Pradesh, Allahabad, dated 9th March, 1959, in Election Petition No. 451 of 1957, Haji Abdul Wahid—Petitioner-Appellant.

Versus

Dr. Balkrishna Vishwanath Keskar and another—Respondents.

Counsel for the Appellant:—

Sri K. N. Singh, Sri S. C. Khare and Sri L. V. V. Singh.

Counsel for the Respondents:—

Sri R. S. Pathak, Sri A. K. Misra and Sri J. Swaroop.

FIRST APPEAL No. 161 of 1959

(Delivered by Hon'ble Gurtu, Judge.)

This is an appeal from the judgment of Sri K. K. Banerji, dated the 9th March, 1959 sitting as Election Tribunal, Uttar Pradesh, given in an election petition No. 451 of 1957 which was heard by him. The petitioner, who is the appellant before us, is Haji Abdul Wahid. The opposite party respondents are (1) Dr. Balkrishna Vishwanath Keskar, Minister for Information and Broadcasting, India, New Delhi and (2) Sri Vidyadhar Bajpal.

The petitioner's case is that the President of the Indian Union issued a writ on the 19th of January, 1957 calling upon the Parliamentary constituencies to elect members for the House of People (Lok Sabha). The said writ fixed the 29th of January, 1957 as the last date for filing nomination papers, the 1st day of February, 1957 for the scrutiny thereof, the 4th February, 1957 for the withdrawal of candidatures and the 31st of March, 1957 as the date before which the election had to be completed.

The respondents filed their nomination papers from the Musafirkhana constituency for the Lok Sabha. The nomination of Dr. Keskar was filed on the 29th of January, 1957. At some date, which has not been given to us, respondent No. 2, Shri Vidyadhar Bajpai, who had also filed his nomination paper, withdrew from the election contest. The symbol assigned to Dr. Keskar at the election was a pair of bullocks with a yoke on. The symbol of the petitioner was an elephant. Dr. Keskar was a candidate of the Congress party. The petitioner stood as an independent candidate. Poll in the Musafirkhana constituency took place on the 3rd, 6th and 9th of March 1957. The counting of votes was done on the 18th of March, 1957 and as a result of the counting Dr. Keskar was declared to be duly elected on the 20th of March, 1957.

Then a petition was presented to the Election Commission, India by the defeated candidate, Ilaiji Abdul Wahid who alleged corrupt practices by Dr. Keskar and it was prayed in that petition that the election of Dr. Keskar should be declared void and should be set aside and that the petitioner should be declared to be the duly elected candidate in place of Dr. Keskar. This petition was forwarded for decision to Shri K. K. Banerji, sitting as Election Tribunal, Uttar Pradesh. Amendment by particularisation in the petition was permitted by the said Election Tribunal and a written statement was filed which led to the framing of a large number of issues.

After recording evidence the Election Tribunal, upon an examination of the oral and documentary evidence as also of the pleadings, found the issues against the petitioner and the election petition was dismissed.

In all 23 issues had been framed by the Election Tribunal but learned counsel in this appeal stated that he would press only issues Nos 1, 2, 3, 4, 5, 7, 9, 10, 11 and 20. The other issues were not pressed before us and the findings of the learned Tribunal in regard to the other issues were not assailed by learned counsel appearing for the petitioner appellant.

In our view, it would facilitate matters if we deal with the issues which have been pressed before us in the same manner as was adopted by the Election Tribunal i.e. of grouping the issues together, stating as to what the charges of corrupt practices relating to those issues are and then analysing the oral and documentary evidence connected with those issues and giving our decisions thereon.

Issues Nos. 1, 2nd part of issue Nos. 2, 3 and issue No. 9 have been dealt with together by the said Election Tribunal. These issues run as follows:—

Issue No. 1.

“Whether the respondent No. 1 enlisted the support of the District Magistrate and the Government Officers mentioned in paragraphs 7 and 7A in arranging the election meetings of the 15th and 16th January, 1957, mentioned in paragraphs 7 and 7A of the petition and was any corrupt practice committed by the respondent No. 1?”

Issue No. 2.

- (1) Whether the respondent No. 1 used the Ashok Chakra and the State flag during the tour of his constituency on the 15th and 16th January, 1957 and—
- (2) Whether any Government Officers assisted in arranging meetings, election campaign and in propaganda as alleged in paragraphs 8 and 8A of the petition, and whether any corrupt practice was committed by the respondent No. 1?

Issue No. 3.

“Whether the allegations contained in paragraphs 7 and 8 of the petition amount to obtaining or procuring assistance in furtherance of the prospects of the election of the respondent No. 1 from persons in the service of the Government as defined in section 123(7) of the Representation of the People Act?”

Issue No. 9

“Whether the respondent No. 1 is guilty of corrupt practice of using the National flag or any National emblem in furtherance of the prospects of his election as defined in section 123(3) of the Representation of People Act?”

Paragraph 7 of the election to which a reference is made in the issues framed alleged that the election in question was not free and fair in that Dr. Keskar used his position as a Minister of the Indian Government with the then District Magistrate of Sultanpur and his subordinates to enlist support for his election. The allegation was that meetings were arranged through various officers and they were asked to use their official influence with the electorate to cast their votes in favour of Dr. Keskar. Paragraph 7 gives the details of the meetings which are alleged to have been held on the 15th as also on the 16th of January, 1957. We need refer only to the meeting alleged to have been held on the 15th of January, 1957 at 2 P.M. at the Higher Secondary School, Bharkhara, and the meeting held on the 16th of January, 1957 at 3 P.M. at Gauri Ganj. Six other meetings, which were alleged to have been arranged by and with the help of officers, were specified in paragraph 7A of the petition and the names of the helping and arranging officers were given. Inasmuch as no evidence was led in regard to these meetings, it is not necessary to set them out. The meeting held on the 15th of January, 1957 at 2 P.M. at the Higher Secondary School, Bharkhara, is described as a public meeting in the holding whereof assistance was rendered by the six named officers. The meeting of the 16th January, 1957 at Gauri Ganj is again described as a public meeting the arranging whereof was alleged to have been assisted by the seven named officers.

In paragraph 8 of the petition which is referred to in Issue No. 2, it is alleged that Dr. Keskar toured round his constituency on the 15th and 16th of January in his State car bearing the Ashok Chakra, the emblem of the Government of India at conspicuous places in front as well as in the rear of the car. It is also alleged that wherever Dr. Keskar went on those dates, he was attended to by officials and was given a guard of honour, the result of which was that an impression was created upon the electorate that Government was backing Dr. Keskar and not voting in his favour would incur displeasure of the Government. It is alleged that in consequence votes went in favour of Dr. Keskar.

Paragraph 8 of the petition names the following places to which Dr. Keskar went:—(1) Sultanpur, (2) Bharkhara, (3) Kamtaganj—all on the 15th January and (4) Sultanpur, (5) Amethi, (6) Thaura, (7) Shahgarh, (8) Gauri Ganj and (9) Babuganj—all on the 16th January in the State car bearing Ashok Chakra. It is alleged that Sri Pradhan, District Magistrate, issued an official programme. The time at which he reached the places mentioned previously were specified in paragraph 8A.

In connection with these issues, an introductory argument was advanced that Dr. Keskar had held himself out as a candidate much prior to the 15th and 16th of January, 1957, i.e. the dates of the public meetings referred to hereinabove and of the alleged tour in the constituency. It was contended that much prior to these dates Dr. Keskar knew that he would stand for this constituency and that he held himself out as a prospective candidate much prior to the 15th and 16th of January, 1957. It was contended that Dr. Keskar had obtained blank nomination papers one of which was filed by him later as also true copies of an extract from the list of voters, both documents having been obtained on the 9th of January, 1957. It was then contended that it was because Dr. Keskar had decided to be a prospective candidate that the meetings of the 15th and 16th of January, 1957 were arranged under official auspices and at these meetings speeches of an electioneering character were made. On the other hand, the contention on behalf of Dr. Keskar was that he could not hold himself out as a candidate because he had yet to be finally selected by the Central Election Committee and that his official selection as a Congress candidate for this Musafirkhana constituency was only made on the 22nd of January, 1957 and that, therefore, he could not have held himself out as a candidate prior to that date because he could not have been certain that he would be either selected by the Central Election Committee as a Congress candidate or as a candidate for the Musafirkhana constituency.

The argument raised by learned counsel for the appellant was that Dr. Keskar was, in effect, relying upon a technicality, that though his official selection was by the said Election Committee and may have been on the 22nd of January, 1957, yet he could have had no serious misgivings that he would be allowed to stand as a candidate for the election and the fact that he arranged meetings for the 15th and 16th to be held in the very constituency in respect of which he ultimately filed his nomination paper shows that he was certain in his mind that he would be a Congress candidate from that constituency.

Now so far as the purchase of the nomination paper and the true copy of the list of voters is concerned we are unable to say that that action by itself could be taken to establish a holding out by Dr. Keskar that he was to be a prospective

candidate from that constituency. We agree that Dr. Keskar must have had a fair belief that he would be allowed to stand for that particular constituency but we are unable to agree that the official meetings of the 15th and 16th January, 1957 were caused to be arranged for the purpose of Dr. Keskar making electioneering speeches at those meetings or that the arranging of those meetings in a constituency from which he could be a candidate involved his holding himself out as a Congress candidate who would file his nomination paper from the constituency. Although Dr. Keskar could have been almost certain that he would be selected to contest from that constituency, yet until a final decision was taken, it is unlikely that he would hold himself out because in the event of his being assigned another constituency, his conduct in holding himself out prematurely as a prospective candidate for that constituency would have looked very foolish. In the circumstances, we find it difficult to hold that the mere fact of the official meetings having been arranged constituted a holding out or that the alleged movement of Dr. Keskar on the 15th and 16th January, 1957 in that area constituted such a holding out by him. But the petitioners' case is not merely that the said holding out could be inferred from what has been stated above but that speeches of an electioneering character were made by Dr. Keskar at the official meetings which were so arranged. Evidence has been tendered on behalf of the petitioner, as we have indicated already, in respect of two places out of the several mentioned and if it is held that those speeches were in fact, made, then it would not be necessary for the petitioner to fall back upon the other facts and circumstances indicated heretofore because if those speeches were made, then Dr. Keskar must undoubtedly be taken to have held himself out as a candidate for the forthcoming election from that constituency. Undoubtedly the two meetings, in respect of which evidence has been tendered were meetings which had been organised by officials and at those meetings no doubt all the official paraphernalia was there and Dr. Keskar was in an official car which must have carried the Ashok flag and Chakra.

The question then is whether Dr. Keskar utilised those meetings for the purpose of making utterances of an electioneering character. We may here add that alongside the official meetings, there were held what were called worker's meetings. But in regard to the workers' meetings, there is no evidence whatsoever as to what transpired at those meetings and the petitioner does not rely upon what may have happened at the worker's meetings to establish that there was any holding out or that there was any speech made in the constituency. The evidence of Sri A. C. Ambuani, Superintendent of Police, who was present with Dr. Keskar on the 15th and 16th is clear on the point that the officials had nothing to do with the workers' meetings at all except for the fact that in the official programme issued there was a reference to the workers' meetings and the official programme was also sent to the President of the District Congress Committee for information and action. There is nothing whatsoever to show that those worker's meetings were organised under official auspices. We are, therefore, left with the official meetings and we will now examine the evidence relating thereto:—

The Bharkhara meeting was held at the Higher Secondary School. The time given in the official programme is 2 P.M. It appears that Dr. Keskar was present at the Higher Secondary School in connection with a function of the said school. Exhibit X is an invitation which was issued in connection with that function. In the invitation Exhibit X, there is an item No (4) एकांकी वोट किसके? There is a conflict of testimony if and when this item was performed:—

One of the witnesses on behalf of the petitioner deposed that the drama in question was held but the preponderance of evidence in this case is the other way round, and several witnesses have stated that no drama was held. The witness who spoke of the drama having been held is P.W. 24, Bindeshwari Prasad Tewari, and it was this witness who produced the printed invitation card marked Exhibit X, objection to the production whereof was taken on behalf of the respondent but it is evident that this card was issued to invitees and the meeting which has been called an official meeting at Bharkhara was connected with this school function and this would seem to dispose of the contention that the programme for a meeting on the 15th at Bharkhara was a device of Dr. Keskar to provide an election forum for himself.

Bindeshwari Prasad Tewari, P.W. 24, says that the boys staged a drama on that occasion. He does not give any particulars in regard to what drama was staged and as to whether it had anything to do with the election, whether it was a serious approach to the problem or whether it was a skit intended to ridicule the election.

The question whether a drama was held or not becomes important for two reasons, namely (1) if Dr. Keskar and officials were present at a drama which dealt with the subject of election and (2) if there was any suggestion in the drama that Congress candidate or Dr. Keskar should be elected, then because the officials were present and the function had also a quasi-official character, the matter would be serious. Apart from that if a drama of that nature was staged, it might have prompted Dr. Keskar to make some reference to election and he might have, in an unguarded moment, canvassed support for his election. But, as we have already pointed out, there is voluminous evidence on behalf of the respondent which negatives the suggestion that a drama was held or, at any rate, it was held while Dr. Keskar was there. If no drama was held, as we hold, then it is apparent that it would not prompt Dr. Keskar to make any reference to his election or to make a speech of an electioneering character in consequence of the play having been enacted. Of course, Dr. Keskar might otherwise have made an election speech. It was suggested that Dr. Keskar had an audience, and even if he had not come with the determined intention of making election utterances, he might not have been able to resist the temptation to ask for support for his election. We feel great hesitation in accepting this contention. In the first instance, as we have already pointed out, Dr. Keskar could not, with any degree of certainty, predict that he would be selected for Musafrikhana constituency because ultimately if he was not selected, then any speech that he would make holding himself out to be a candidate would certainly look very foolish later. We think that the first stage in an election campaign must necessarily be to get one's election machinery in order before embarking upon a direct election appeal by the candidate concerned. But what makes us very doubtful as to whether the speech attributed to Dr. Keskar was at all made is its alleged nature. The substance, as given, does not show that any comments were made appropriate to the function over which he was presiding, namely, a school prize distribution function but he is only shown to have made an electioneering speech. If it had been suggested that while making the sort of speech, which a person would make while presiding over a school function he was led up to making a speech canvassing support for himself, the position would have been different. According to Bindeshwari Prasad P.W. 24, this is what Dr. Keskar said "There is a tension between India and Pakistan on the question of Kashmir. Shri Hajl Abdul Wahid is opposing me. You should cast votes. I have served you for 7 years. I am going to serve you again for another term."

The version given by P.W. 11 of the speech is as follows:—

"He addressed the meeting in this way that the petitioner was a dealer in bones and there was tension between India and Pakistan for which the public should consider these matters and then cast their votes."

The third witness, Sri Surya Bux Misra, P.W. 12 said as under:—

"He addressed the meeting in this way. Both he and the petitioner had stood in the last election but the petitioner had lost in a miserable fashion. He referred about the dispute between India and Pakistan on the question of Kashmir. He said that votes should be cast after consideration on these facts."

Though in all these three versions the dispute between India and Pakistan figures, there is a difference also. Now even if Dr. Keskar was certain that he was going to stand for that constituency, the substance of the speech, as given by Sri Surya Bux Misra, would lead to suggest that Dr. Keskar was also certain that the petitioner would also stand as a candidate even though the petitioner had not yet filed his nomination papers and in view of the fact that Surya Bux Misra says that the petitioner had lost previously in a miserable fashion there could be no certainty in Dr. Keskar's mind that he would repeat his foolish attempt to win in the constituency in which he had failed so badly previously. This constituency, it was admitted before us, is a mixed Hindu Muslim constituency, about a quarter of the population being Muhammadans. The question is whether it is reasonable to suppose that a person who occupies a position of the Minister for Information and Broadcasting and presumably has an average degree of intelligence would start off his election campaign with a communal speech. No doubt the petitioner is a Muhammadan, but we are very doubtful whether even if the question of India and Pakistan was raised (which we do not believe) an insinuation would be made that the petitioner was a Pakistani. It must not be overlooked that the speech was one at a school function. One could understand a speech with a communal bias being made at a later stage of the campaign at a purely election meeting to meet the contingency where the balance was going against Dr. Keskar, but we doubt very much whether such a speech would have been made by Dr.

Keskar at so early a date. Admittedly many persons were present at the school but it is surprising that the evidence given should be that of three persons only who, upon the very nature of their testimony, clearly appear to be hostile to Dr. Keskar. The learned Judge has not relied upon their evidence at all, and we do not see any reason to differ from the learned Judge's estimate of their veracity. Dr. Keskar has definitely denied having made an electioneering speech at all and has examined witnesses to show that no electioneering speech was made by him.

R.W. 11, Ramjiwan says that Dr. Keskar spoke to the students about education and that he did no say anything in the meeting in the way alleged, about election matters. This is more understandable than what the petitioners witnesses say. He then said that after the function was over Dr. Keskar talked to five or ten Congress workers in a room and that there was no speech made in that meeting of workers.

R.W. 14 is Sri A. C. Ambuani. He was the Superintendent of Police, Sultanpur, at the relevant time and he was with Dr. Keskar in his official capacity. He stated that there was a function in the Bharkhara school, in which Sri Pradhan, Deputy Commissioner, Sultanpur, and he were present, and so was Dr. Keskar. They had been invited by the school authorities. He then said that it was a social function and it had nothing to do with the election matter and that Dr. Keskar did not deliver any election speech in this function, nor did the Deputy Commissioner, Sri Pradhan, make any election speech.

It was suggested that Sri Ambuani had spoken a lie in order to please Dr. Keskar and further his prospects. He was asked whether he was made a Commandant of the Prantiya Raksha Dal and whether it was not a promotion. We are unable to believe that Sri Ambuani would risk perjury in order to please a Minister of the Central Government. What he says seems to conform to common sense. There is no doubt that there was this school function and it seems to us to be highly improbable that this function, where there must have been a preponderance of boys and their parents, would be turned into an election meeting.

R.W. 20, Sri Gur Prasad Singh, also denies that any election speeches were made at the school. The only thing that seems to have been elicited in cross-examination relating to this part of the witnesses' statement was that he was not sure whether he had received an invitation card to attend the Bharkhara meeting.

We have carefully considered the criticism generally made by the Election Tribunal against the evidence of the three witnesses who have spoken in support of Dr. Keskar having made an electioneering speech. Having regard to all the evidence and circumstances, we are unable to differ from the finding of the Tribunal that no election speech was made at the meeting held on the 15th of January, 1957 at the Higher Secondary School, Bharkhara.

There are two witnesses who spoke about Dr. Keskar having delivered an electioneering speech at Gauri Ganj on the 16th of January, 1957. They are Rampal Pande, P.W.5 and Ram Khelawan, P.W. 10. Apparently on the 16th January, 1957, the inauguration of the block development took place at Gauri Ganj. This witness, Rampal Pande, was there as a member of the Gram Panchayat. He says that:—

"A meeting was held at that spot. The Deputy Commissioner of Sultanpur spoke for a minute or two and Dr. Keskar spoke next, and then the planning officer thanked. Dr. Keskar spoke for half an hour. Dr. Keskar said that the public had given him an opportunity to serve for the last 5 years and that the Development Block was being opened by his efforts and the block was for the benefit of the public and that the public should co-operate with this development scheme."

He then says that Dr. Keskar turned to the Sabhapati and the other members of the Gaon Sabhas of that constituency and said that Sri Abdul Wahid was defeated in the last election, that he had stood in the present election, that in the present election the questions to be considered were the relationships between India and Pakistan and position of Kashmir and that, therefore, they should give their due consideration before casting any vote for Haji Abdul Wahid. He then said that Haji Abdul Wahid was a begot and a strong Muslim.

We are wholly unable to believe that Dr. Keskar would have made a speech of this character in the presence of officials. Dr. Keskar could not possibly have made a speech of this nature without exposing himself as a complete communalist and destroying his reputation. It must not be overlooked that he was still a minister of the Central Government and presumably he was not anxious to lose his reputation by making a speech of this nature which would have been carried to the right quarters if the same would have been made. We have carefully considered the criticism made by the Election Tribunal on this part of the case. We respectfully adopt the Tribunal's criticism of the evidence and we are of the view that the story now told of Dr. Keskar having made election speeches on the 15th and 16th or having directly or indirectly canvassed for support in the coming election is a got-up story.

We now come to the question of Dr. Keskar's use of the official paraphernalia, which is the subject matter of the charge as framed in paragraph 8 and 8(a) of the petition. So far as the 15th and 16th are concerned, since Dr. Keskar carried on no electioneering on those dates nor held himself out as a candidate, the presence of officials or participation in arrangements by them would not amount to any sort of corrupt practice. Admittedly the functions on the 15th and 16th were also organised and attended by officials (except what we call workers meeting) and therefore the entire paraphernalia of an official visit of a minister of Government must have accompanied that visit. We do not consider that it is prohibited for a Minister of Government to carry on his normal duties in the normal way because an election is about to start. Therefore the movement of Dr. Keskar in the constituency area and his presence at the places indicated could not in any way be considered to be a corrupt practice.

We will now deal with the first part of issue No. 2 and issue No. 9 which have been dealt with together by the learned Judge. The first part of issue No. 2 is as follows:—

“Whether the respondent No. 1 used the Ashok Chakra and the State flag during the tour of his constituency on the 15th and 16th January, 1957.”

Issue No. 9 is as follows:—

“Whether the respondent No. 1 is guilty of corrupt practice of using the National Flag or any national emblem in furtherance of the prospects of his election as defined in Section 123(3) of the Representation of People Act?”

So far as the first part of issue No. 2 is concerned, it relates to the 15th and 16th only. We have already indicated that if no electioneering speeches were made and Dr. Keskar had not previously held himself out as a candidate as we have already held, the presence of Ashok Chakra and National Flag would not be of any avail.

So far as the use of National Flag and Ashok Chakra on dates other than the 15th and 16th are concerned, the evidence is in regard to its use at Adaru Ka Mela, Ramganj, Raniganj, Musafirkhana and Gauriganj. We will take up these places one by one.

Adaru Ka Mela: Paras Nath, P.W. 1 says that seven or eight days before the election Dr. Keskar, Sri Rama Kant Singh and others had come to the Mela in a car. It was a Studebaker type and the National Flag was flying on it. At the rear of the car there was a symbol of a circle with a fish and arrow. It may be pointed out that it was admitted that this Studebaker car was a Roadways car and it could be hired. All Roadways cars have a symbol of a circle with a fish and an arrow printed on their back as they are Government property, this being the device used in the State of Uttar Pradesh. If the cars could be hired out, then the presence of this device indicating that this was a Government property would not be material at all. Everybody in Uttar Pradesh is familiar that this device is in all transport buses belonging to the State Government and that the existence of this device carries with it no political implication or status. This witness is the solitary witness in regard to Adaru Ka Mela. The learned Judge has described him as hostile to the respondent. In any case it seems to us that it would be quite unsafe to accept the statement of one witness of this character in order to hold that the case regarding the use of National Flag is proved against Dr. Keskar so far as Adaru Ka Mela is concerned.

Ramganj: In regard to this place there is the evidence of P.W. 2, Zamin Ali. He says that on the 8th of March 1957 he saw Dr. Keskar in Ramganj at about 4 P.M. and that during the election he had seen Dr. Keskar moving about in a

car, a big one, having the picture of Ashok Chakra on it which was placed in front of the car. At the rear of the car there was the sign of the fish, the symbol of U.P. Government. It is admitted that Dr. Keskar was not using his official car. So this could not be a case of a failure to remove the flag from the official car, but this would be a case of putting an official flag on it. We doubt whether Dr. Keskar having discarded the official car would like to give this car of the U.P. Transport an official ministerial appearance by putting on the flag. Zamin Ali is very close to the petitioner and he goes to the extent of saying that canvassing started two months earlier on both sides. He is clearly a very partial witness and on the strength of his evidence alone we are not prepared to hold that at Ramganj on the dates stated above Dr. Keskar was using the National Flag.

Raniganj and Gauriganj: In regard to these two places we have the evidence of P.W. 5, Ram Pal Pandey. He says that Dr. Keskar used to move about in a car during the election days. It was a big car and used to fly a national flag and on the front and the rear bumpers there were the symbols of the Ashok Chakra. He saw it at Gauriganj. This witness seems to be a professional political worker who changes sides and does not appear to be at all a reliable person. In any case he is the sole witness for Gauriganj and it is not safe to rely upon his testimony.

Musafirkhana: Regarding Musafirkhana we have the evidence of Lachmi Narain. He says that he saw Dr. Keskar one day prior to the date of polling in a car which carried a tricolour flag with a print of Ashok Chakra on it flying on the car. This witness is a resident of Adilpur and not of Musafirkhana proper. He on his own showing is a witness who has little experience of either litigation or political canvassing. He is innocent of the world. He does not know what a District Board is or a Municipal Board is. He never acted as a Mukhtar, never saw a lawyer and never heard any political lecture. He does not seem at all to be a politically inclined person nor a man of awareness. Therefore, it seems doubtful to us that he would have been careful to notice whether there was a tricolour flag and particularly that it bore an Ashok Chakra on it. On Lachmi Narain's evidence we are unable to hold that it has been established that Dr. Keskar was seen one day before the election at Musafirkhana with the National flag, flying on his car. One other witness Ram Khelawan, P.W. 10 has spoken about the use of the flag at Gauriganj but that was in connection with the Development Block's opening on the 16th January, 1955.

It will thus be seen that the use of the national flag after the 15th and 16th January at the places already indicated is sought to be established by the statements of a few and not reliable witnesses. It is true that the evidence relates to four places and it was suggested that even though one witness has deposed about one place, several witnesses have deposed about the carrying of the national flag. We think that the statement in regard to each place should be judged separately and the mere fact that four or five witnesses have spoken altogether would not matter as we have found that each one of those witnesses is unreliable. One unreliable witness cannot be corroborated by another. There is one point that we have noticed and it is this that in the examination-in-chief the witnesses were made to speak only of a tricolour flag but later on they were made to depose that there was an Ashok Chakra on it. We doubt whether even if the tricolour flag was noticed by the witnesses, they would have particularly gone and examined or taken care to notice whether or not there was an Ashok Chakra on it too. The Ashok Chakra has been specifically mentioned. We feel that this evidence is tattered evidence and we are not prepared to rely upon it *inter alia* for the reasons given by the Tribunal for rejecting the evidence on this point of these witnesses. Nothing has been shown to us as to why the judgment of the Tribunal in regard to the value of the witnesses testimony should not be accepted by us more particularly when we ourselves feel that the evidence is far from satisfactory. We, therefore, feel that issue No. 2, part (1) and issue No. 9 were rightly answered against the petitioner. We might add that we have not repeated the objections in regard to the evidence of these witnesses raised by the Election Tribunal. We think it is superfluous to do so because we are in agreement with the Tribunal's judgment.

We now come to issues Nos. 4 and 5 which are dealt with together. The issues are as follows:—

“4. Whether the Respondent No. 1 has been guilty of any fraud, intentional representation, corrupt practices and any other electoral offence alleged in paragraph 10 of the Petition, and was it on account of such practices that he secured the majority of votes and won the election?

5. Whether the allegations contained in paragraph 11(a), 11(a)(i) and 11(a)(ii) of the Petition are true and whether any corrupt practice was committed by the Respondent No. 1 and his Agents, canvassers and supporters as to invalidate his election?"

Paragraph 10 of the petition makes a general allegation and there is no particularisation at all. It is in paragraph 11 that the particularisations are mentioned. Paragraph 11(a) relates to one Kr. Rananjaya Singh of Amethi with whom Dr. Keskar is said to have entered into a compact. Kr. Rananjaya was to support Dr. Keskar and the latter was to arrange to get Rananjaya Singh's nomination to the U.P. Legislative Council. As a result of this compact Kr. Rananjaya Singh became an active supporter of Dr. Keskar and held public meetings at Kalikan, Amethi and other places where he made speeches. In paragraph 11(a)(i) it is said that Rananjaya Singh started decrying the petitioner as cowbone-seller, anti-Hindu and anti-Indian, a pro-cow slaughter, and a pro-Pakistani. It gives the dates and times of the meetings addressed. Paragraph 11(a)(ii) of the petition refers to Rananjaya Singh causing to be printed and distributed a pamphlet (Ex. I) among the electorates, the contents of which he knew to be false. It is alleged that respondent No. 1 also knew that the contents of the aforesaid Ex. I were untrue and false, to his knowledge, and he did not believe the same to be true.

We will now deal first with the evidence of the said compact. The only evidence for the petitioner on this matter is of Bindeshri Prasad Tewari, P.W. 24. He says that he was present when Dr. Keskar arrived at the house of Kr. Rananjaya Singh on the 16th of January, 1957. Bindeshri Prasad gave an explanation as to how he came to be present there. He said that he had asked Kr. Rananjaya Singh to fight the election on the Praja Socialist Party ticket but Kr. Rananjaya Singh had told him that Dr. Keskar was coming to him on the 16th January and that Kr. Rananjaya Singh would give his answer (to Bindeshri Prasad) after he had met Dr. Keskar. The co-incidence of Bindeshri Prasad's arriving at Rananjaya's house when Dr. Keskar came there is striking. According to Bindeshri Prasad, Dr. Keskar had a talk with Rananjaya Singh in his presence and Dr. Keskar made the proposal to Rananjaya Singh which was accepted. Bindeshri Prasad has admitted in cross-examination that he did not know Dr. Keskar when he met him at the house of Rananjaya Singh, but he was introduced to Dr. Keskar only after the talk and by Kr. Rananjaya Singh himself. Naturally the Tribunal did not believe this story on two grounds. Firstly, would Kr. Rananjaya Singh, who had an offer from Bindeshri Prasad, enter into his alleged compact with Dr. Keskar in Bindeshri Prasad's presence. Secondly would Dr. Keskar who did not even know Bindeshri Prasad, enter into this negotiation in the presence of an unknown person. One must predicate a certain amount of common sense even in an anxious candidate and from the evidence it appears that Dr. Keskar could have no great anxiety in regard to the strength of the petitioner who according to the evidence in this case had "miserably failed" at the previous election when he stood against him. Apart from the political hostility which this witness bears to the Congress organisation which has been brought out by the Tribunal we think it is highly improbable that he was a witness of this alleged conversation as has been pointed out by the Tribunal. The subsequent conduct of this witness in failing to make the best of his knowledge that there was a compact could only suggest one or two things, either he had no knowledge as he alleged or he was above the standard of human conduct. We think it is the former case. The respondent has denied that he had entered into any such contract with Kr. Rananjaya Singh. A compact of the nature suggested cannot be inferred merely from the fact that Kr. Rananjaya Singh was supporting Dr. Keskar. If the compact theory is knocked on the head Kr. Rananjaya becomes an ordinary supporter without any special motive for being overzealous. The meetings said to be addressed by Kr. Rananjaya Singh and Dr. Keskar are mentioned in paragraph 11(a) of the petition wherein it is stated that they were held at Sultanpur, Bharkhare Amethi, Thaura, Shahganj, Gauriganj, Baluganj, and Lombhan Bazar. Evidence has only been placed before us in respect of the meeting at Gauriganj alone.

We will now deal with the evidence relating to Gauriganj. P.W. 5. Rampal states that the meeting was held 15 or 16 days before the polling. It was addressed by Dr. Keskar and Kr. Rananjaya Singh. Dr. Keskar repeated the very same speech that he had made on the occasion of the inauguration of the Development Block at Gauriganj on the 16th January and Kr. Rananjaya Singh said that Haji Abdul Wahid was a Pakistani Agent and that he carried on business in cow bones, that the Congress had stopped cow slaughter by which his business had been affected and that if any Hindu voted for Haji Abdul Wahid.....he

would go to hell because his sin would be the same as of killing a cow. We have already rejected the petitioners' case that Dr. Keskar made the speech on the 16th of January attributed to him. Inasmuch as Kr. Rananjay Singh's speech is said to have been made in the presence of Dr. Keskar, who presumably would know the limits to which such speeches should be allowed to go inasmuch as no candidate would like to damage himself, had he been present there he would have stopped Kr. Rananjay Singh if he had in fact tried to make a speech of the type that has been attributed to him. We can understand a speech of this nature being made possibly in the absence of Dr. Keskar, but we doubt whether he Kr. Rananjay Singh would have been permitted to make it in his presence. Moreover, we think that this piling of communal sentiment does not seem to be quite natural and the speech seems to us to be very easily explainable as a concoction than as a speech which was delivered at all. The witness is connected with the Praja Socialist Party and is obviously mimical to the respondent:—

Jagat Narain, P.W. 7 also refers to the speech at Gauriganj 15 or 16 days before the voting. He states what Dr. Keskar said and then what Kr. Rananjay Singh said. Both the speeches of Kr. Rananjay Singh and Dr. Keskar are shown as communal speeches. The witness said that he did not protest against the speeches made at Gauriganj nor did he send anything in writing to the petitioner to inform him about the proceedings of the meeting nor did he give this information about the speeches made in this meeting to any authority. He was unable to give the name of any person who was present at the Gauriganj meeting besides himself. The witness is obviously on the side of the petitioner and in view of the point which has come out in his cross-examination we think he cannot be relied upon.

Vijai Pal Pande, P.W. 18 gives the purport of Dr. Keskar and Kr. Rananjay Singh's speeches at Kalikan in the third week of February and the speeches are shown as having been of a communal character. This witness has admitted that he did not want Congress to win. During the last election, according to this witness, Kr. Rananjay Singh was working for the Congress party. He said that his own election had been affected by the speech and the canvassing of Kr. Rananjay Singh and he was not successful in the election of 1957. Obviously this witness had a grievance against Kr. Rananjay Singh also. He has admitted that he did not protest to Kr. Rananjay Singh about the speech he made nor did he carry the protest to any authority. It may be observed that the speech at Kalikan was not expressly pleaded as having been made by Kr. Rananjay Singh though it was stated that he had held a meeting there. Dr. Keskar has denied that any speeches were made of the character attributed by him or by Kr. Rananjay Singh. We find that the kind of speeches attributed to Dr. Keskar or Kr. Rananjay Singh were not made.

We will now deal with the question regarding the leaflet Ex. I. It is alleged that Kr. Rananjay Singh published and distributed notices like Ex. I among the electorate. The respondent has stated that he came to know about this notice only when he received a copy of the petition along with the copies of the appendices. The printing, publication and distribution of the notices like Ex. I throughout the constituency have been denied. First, we will refer to the notice Ex. I in order to determine its true character. On the one side it is said that it has no communal character and that it does not in any way reflect upon the character of the petitioner. On the other side it is said that it constitutes a communal appeal and reflects upon the petitioners' untruthful character. The notice in its translated form is printed at page 243 of our paperbook. We have revised it carefully and we have come to the conclusion that the appeal embodied in that notice cannot be said to be clearly of a communal character. The part that is said to imply that the petitioner is a traitor and a Pakistani runs as follow:—

"At present when owing to the manufacture of new weapons of wholesale destruction there exists tension in the world and the prospects of third world war are increasing, our greatest and most beloved leader the Prime Minister Shri Jawaharlal Nehru is trying his level best to restore peace throughout the world on the basis of Panch Shila Principles, but the Pakistanis are threatening war by invading Kashmir and are adopting various ways to dismember the unity of India by sending secret agents and spies. Under such circumstances it becomes the unavoidable duty of every patriot to strengthen the hands of the Government, excepting the Congress there is no other

party which has got candidates enough to form the Government. Hence it is indisputable that people can serve the country best by casting their votes in the ballot boxes of "a pair of bullocks with a yoke on". Of course it can give pleasure to the Pakistanis if people cast their votes in ballot boxes bearing other symbols because it will appear a treason to our country Bharat.

The public should not be deceived by anybody. The bone contractor, Shri Haji Abdul Wahid was defeated in the last election and lost his security even.....

It is not suggested that the rest of the letter shows him up as a Pakistani or a traitor. We consider that the appeal contained in the three paragraphs in effect amounts to this there were certain danger points in the external and internal situation including a threat by Pakistan to invade Kashmir followed by an allegation that Pakistan was adopting various ways and means to dismember the unity of India by sending secret agents and spies. The second paragraph suggests that the hands of the Indian Government should be strengthened and that the Congress is the only party which has got candidates enough to form the Government and that people can serve the country best by casting their votes in favour of ballot boxes of a certain symbol. In paragraph 2 it is added that it would give pleasure to the Pakistanis if people cast their votes in ballot boxes bearing other symbols because it will appear a treason to our country Bharat.

It is no doubt suggested that voting for other persons would give pleasure to the Pakistanis who would consider the casting of such a vote to be a treason to the country. But that means that Pakistanis will think so. It does not mean that others in India will also think so. We think that the point that is being made in Ex. I is that if there is no stable government, which only the Congress could provide and so prevent the dismemberment of the unity of India, it would give pleasure to Pakistanis and it will appear as a treason to our country Bharat. Then follows in the third paragraph the description of Haji Abdul Wahid as a bone contractor. It is said that there is an oblique suggestion or innuendo that Haji Abdul Wahid being a Mohammadian and a bone contractor was a Pakistani and that, therefore, any vote cast for him would not constitute a vote for India and would give pleasure to Pakistanis. If these three paragraphs had stood by themselves a very suspicious reading of the first three paragraphs might lead to the conclusion that there might be some appeal of the type suggested but the rest of Ex. I shows that the line of attack against the petitioner was really not communal at all because he was said to have been linked up with another Hindu candidate Vijai Pal Pande in regard to whom it could not be said that he was a Pakistani and interested in Pakistan. The paragraph which suggests that neither Vijai Pal Pande nor Haji Sahib, the petitioner, could do credible work in the Municipal Board and the District Board respectively also suggests "then what can be expected of them if they go to Lucknow and Delhi." The rest of Ex. I concerns the alleged signatory Kr. Rananjay Singh. We have given our anxious consideration to Ex. I and we are of the view that it does not constitute a communal approach to the electors. The reference to Pakistan and Kashmir does not necessarily involve communal considerations, but it involves inter-State matters. So far as the untruthfulness of the other allegations contained in Ex. I are concerned, the petitioner has not come into the witness-box to all and there is no reason to suggest that what has been stated in this notice was either knowingly false or was malicious. We consider that this appeal is not objectionable or at any rate not objectionable as electioneering appeals in India go.

The next question is who caused this appeal to be printed. P.W. 7, Narain Goswami has deposed that his press at Lucknow printed Ex. I in the month of February 1957 at the instance of Kr. Rananjay Singh. He said that he printed 1,000 or 2,000 of Ex. I and charged about Rs. 7 or 8 for the same. The evidence of this witness has been examined by the learned Judge and we have also examined it. This witness alleges that he is the manager of the press. He says that Kr. Rananjay Singh did not personally come to the press in order to place the order for printing the notice Ex. I but his Secretary came. He says probably the Secretary is called Ram Kishore Shastri. He did not produce any documentary evidence which would fix the identity of the person who handed over Ex. I for printing. There is no documentary evidence in corroboration of the statement of this witness which would show that in point of fact the Secretary of Kr. Rananjay Singh handed over the same or he took the leaflets back. It is true that Ram Kishore Shastri has not been produced but the onus lies on the petitioner. A suggestion was made regarding this evidence that this was caused to be printed by or on behalf of the petitioner. That may or may not

be a correct suggestion. Dr. Keskar has denied all knowledge about the printing and distribution of this notice. The draft of the notice has not been produced either. We may note also that in the examination-in-chief the matter was put very vaguely and it was said that Kr. Rananjay Singh got this notice printed, he got about 1,000 or 2,000 copies, and he was charged Rs. 7 or 8 for it. But it appears that actually the Secretary came, according to this witness. The statement that the Secretary's name "is probably Ram Kishore Shastri" leaves an impression on our mind that the witness either did not know the name of the Secretary or in point of fact he was not sure that the man who came was the Secretary of Kr. Rananjay Singh. We are unable to hold on the basis of this statement that the identity of the person who gave this leaflet for printing has been satisfactorily established and we are also in agreement with the reasoning and conclusion of the Tribunal in this respect.

We now come to the question whether this pamphlet was distributed at all or distributed to the knowledge of respondent No. 3. The first witness is Paras-nath Dwivedi. He has said that he saw notice Ex. I in Adar Babu Ka Mela and that similar notices were being distributed in that Mela. Kr. Rananjay Singh was distributing these notices to the public assembled in that Mela. He said that Dr. Keskar, Sri Rama Kant Singh and others were with Kr. Rananjay Singh at the time of the distribution. It is to be noted in paragraph 11(a)(u) where the publication and distribution of this notice is attributed to Kr. Rananjay Singh and knowledge thereof to the respondent, it is simply said that the respondent got it distributed throughout the constituency. The time, place and date of distribution is not stated. In these circumstances the petitioner's hands were completely left free to mould the evidence. The first thing to notice is that Kr. Rananjay Singh, it is suggested by the witness, was personally distributing this notice to the public. It is not stated by this witness that these notices were being distributed by other persons also. It is not understood how an extal-
qadar and a very influential person would himself be distributing this notice. He would probably employ a menial for this purpose. The witness was standing and he did not object to the distribution of this notice and he said that he would have objected if his party was concerned. He, thus took the view that the distribution of this notice was bad and yet raised no issue about it. It is to be noted that he himself had not filed any notice. Presumably he must have received one also, if in fact it was distributed in his presence as he alleges.

Zamin Ali, P.W. 2 again states that it was Kr. Rananjay Singh who was distributing the notice in Gauriganj 14 or 15 days before the election. Zamin Ali, P.W. also states that it was Kr. Rananjay Singh who was distributing the notice Ex. I in Gauriganj 14 or 15 days before the election of Dr. Keskar and Sri Dookali Din Sharma were present. In his cross-examination this witness has said that after reading the contents of Ex. I he realised that the Congress was adopting unfair means in the election and he says that he informed the petitioner about the distribution of this notice Ex. I and handed him over a copy of the notice which had been distributed to him. The petitioner has not dared to come and corroborate the witness. He says that he did not hear Dr. Keskar and Kr. Rananjay Singh talking between themselves about the distribution of this notice. He says that he did not make any objection to the distribution of this notice either to Dr. Keskar or to Kr. Rananjay Singh even though he realised that the petitioner would be harmed by the distribution of such notice. He further said that he did not complain at the police station or sent any letter or telegram to the District Magistrate or the Election Officer about the distribution of this notice. He says that he cannot explain why he did not adopt any of these courses. He says that he did not collect the members of the public at Gauriganj and tell them that unfair means had been adopted by distribution of this notice. He says that the agents of the other candidates were also present at Gauriganj when these notices were distributed but he did not make any complaint to them as he did not meet any of them and as he did not know the workers. We are sure that there would have been a great deal of trouble on the spot if these notices were distributed and people thought them to be objectionable. He then left for Amethi and next day where according to him, he saw notice like Ex. I in the hands of several shopkeepers, he was, however, not able to give the name of any shopkeeper. He says that these shopkeepers asked him whether it was a fact that the petitioner was a Pakistani spy. He did not take any address of the shopkeepers in order to inform the petitioner. We are of the view that if Zamin Ali had seen the distribution of notice at Gauriganj (and also had seen the notice at Amethi in the hands of shopkeepers) realising, as he says the harm that these notices were doing, he would have taken some active steps in regard to the distribution. He says

he complained to the petitioner but the trouble is that the petitioner refused to come into the witness box and so we do not know whether any complaint was or was not made to the petitioner. This witness is not an inexperienced person. He was the polling agent of the appellant and had been canvassing for him during the election, and it is difficult to appreciate his allowing this distribution to go on. We think if Zamin Ali had been present when these notices were being distributed there would have been at least a hot exchange of words between the distributors and Zamin Ali. We, therefore, think that Zamin Ali cannot be believed when he says that he was a witness of the distribution either at Gauriganj or at Amethi.

We have perused the evidence of Jagat Narain, P.W. 17. This witness has stated that apart from Rananjay Singh some other persons were also distributing this notice and Dr. Keskar was sitting at the dais at the time of the distribution of this notice. The witness said that he had been handed over the notice like Ex. I, but he had destroyed it instead of sending it to the petitioner. He also did not complain to any government officer. He did not even read the contents of the notice. But he kept it in the bag for his son to read it. When he was shown Ex. I which was filed in court he said that on seeing Ex. I he recalled to his mind that he had received a similar notice at Gauriganj. It seems that this witness is really trying to bolster up the petitioner's case and he was nowhere shown a notice like Ex. I.

The other witness in regard to Amethi is P.W. 18, Vijai Pal Pandey. He says that he saw notice like Ex. I being distributed in the bazar by one Sri Ram Kishore, Private Secretary of Sri Rananjay Singh on a date which he did not remember but he says that was after Shivratri festival. He says that he had got the notice from one of the persons present. This witness is a lawyer of 20 years' standing and a member of Congress for 12 years. He is obviously an educated person and therefore his failure to precisely give the date of the distribution of notice makes his evidence suspect. He says he found the contents of Ex. I objectionable but did not complain to any authority at Amethi or outside. He says he gave vent to his feelings in a newspaper so far as the notice concerned him. (It will be recalled that Ex. I suggests that neither Vijaypal Pandey nor the petitioner did creditable work in the Municipal Board and the District Board respectively), the witness Vijay Pal Pandey did not even report to the petitioner what was happening. He says that his own election was being affected by the activities of Kr. Rananjay Singh but he took no steps to stop the distribution of Ex. I on the spot even though he himself was referred to in Ex. I. It is likely that if he had been present when the leaflets were distributed the distribution could not have gone on at any rate there would have been a verbal altercation even if there was no further trouble. This witness says that so far as he is concerned he does not want the Congress to win. He failed to get elected in 1957 due to Congress opposition. It is political bias which has prompted him to stretch the point against Dr. Keskar. We are of the view that the evidence of distribution is quite insufficient and is of no value so far as Amethi is concerned. Having held that the distribution has not been proved either at Adaru Baba Ka Mela, Gauriganj or Amethi we feel that it is not necessary to refer to all the respondents witnesses in detail. We may state that that Dr. Keskar with reference to Ex. I has stated that he saw the notice for the first time when he received a copy of the petition that he did not authorise Kr. Rananjay Singh to get such notices published, printed or distributed and that such notices were not published, printed or distributed with his consent or within his knowledge. In cross-examination he was asked whether he had ascertained whether Kr. Rananjay Singh had actually got the notices printed. In answer he said that he knew Kr. Rananjay Singh, as a responsible person and he could not have issued such a notice. He said that he had given definite instructions to all his workers that no notice of any kind should be issued. According to Dr. Keskar during the election bulletins, pamphlets and notices were issued by the Congress. These were published by the Central and Provincial Parliamentary Boards and the District Congress Committee did not publish notices about meetings, etc. He categorically says that it is entirely false that notices like Ex. I were distributed in his presence at Gauriganj or Adaru Baba Ka Mela. Dr. Keskar has produced witnesses to give evidence that notices like Ex. I were not distributed. Ganga Prasad, P.W. 15 has stated that it is not true that notices like Ex. I were distributed by Kr. Rananjay Singh in the presence of Dr. Keskar at Gauriganj. Gur Prasad Singh, P.W. 20 when shown Ex. I said that he was seeing Ex. I for the first time that day and it was not distributed by anybody on the 15th and 16th January 1957. Inasmuch as we have not believed the petitioner's evidence it strengthens the position that Dr. Keskar has denied the distribution and some of this witnesses

have supported him. Nothing has come out in the cross-examination by which the statement of Dr. Keskar and his witnesses on this point should not be believed. The statements confirmed our view that in point of fact there was no distribution as alleged. In these circumstances it is not necessary to discuss in detail whether Ex. 1 amounts to undue influence and also contains false statement about the personal character of Haji Abdul Wahid. We have already indicated our view that Ex. 1 cannot be taken to suggest that the petitioner Haji Abdul Wahid was a Pakistani spy. The other statements made in the petition have not been proved to be false. They are ordinary type of statements that are made in regard to rival candidates particularly in this country where there is a tendency to depart from restraint in expressions. We cannot say that there is an attack on the personal character of the petitioner in this pamphlet apart from the criticism of his suitability as a candidate and his electioneering method. Some latitude must be allowed for criticism in an election. Nor do we think that any undue influence flows from the contents of this pamphlet Ex. 1. There is nothing to suggest that this pamphlet would deprive any voter of his freedom of action and compel him for one reason or another to vote against the petitioner. We will consider the question of undue influence a little more in detail when we come to consider pamphlet Ex. 2 which was said to have been distributed also. We therefore feel that no corrupt practice is made out against Dr. Keskar with reference to Ex. 1. It has not been proved as to who caused it to be printed nor its distribution is proved nor is it established that the pamphlet carries on *imputation* that petitioner was a spy and it does not reflect on his personal character in any such way as would make the alleged distribution a corrupt practice.

Ex. 2 is a pamphlet which is said to have been issued by Sri Rudra Prasad Misra, who undoubtedly as will appear from the polling agent form Ex. 9 was the polling agent of Dr. B. V. Keskar. The original of the printed pamphlet is Ex. 8 and is in manuscript and the printed version thereof is Ex. 2. The pleading about Ex. 2 is contained in paragraph 11(a) and 11(a) (i). Dr. Keskar is charged with having known of the untruthfulness and falsehood of the contents of the notice printed, published and distributed in the constituency by Sri Rudrapal Misra. The charge also is that the pamphlet was "distributed in the knowledge and in the presence of the respondent No. 1 throughout the constituency." It will be apparent that the time and place of the distribution is not specifically indicated. The pleadings would seem to suggest that consent was pleaded with regard to the distribution of Ex. 2. We will first deal with the contents of Ex. 2. In the first paragraph there is a clear averment that the petitioner Abdul Wahid is an agent of Pakistan. Paragraph 2 refers to the petitioner being a trader in bones and that he will help to re-start cow slaughter. It is stated that "whosoever will vote for him will be visited with the sin of cow slaughter and with the sin of treason to Bharat Mata. He will become an object of divine displeasure and will have to undergo the sufferings of hell." The pamphlet is headed as "Bell of Danger". It is signed by Rudra Pal Misra who describes himself as a member of the District Congress Committee, Sultanpur. There is also the signature of one Surya Narain Tripathi. This pamphlet is shown to have been printed at Janmat Press, Sultanpur. It may be said that this pamphlet makes a serious imputation on the personal character of the petitioner inasmuch as he is described as a Pakistani spy. There is nothing to suggest that that is nothing but false. There can also be no doubt that there is an attempt in this pamphlet to exercise undue influence. Any voter who read this pamphlet would consider the petitioner to be quite unworthy of his support and he would get frightened to support him for fear of punishment in the next world. This pamphlet also constitutes a direct appeal of a communal character.

Before proceeding to examine the evidence relating to this Ex. 2 would like to refer to some cases which have been cited before us in regard to what constitutes undue influence. In Abdul Jalil Choudhury V. Rathindra Nath Sen (A.I.R. 1958, Assam 51) the publication which was said to have exercised undue influence in substance stated that the leftist did not admit the independence of India and if they were elected Muslims would be driven out of Bharat and they would create feuds with the neighbouring countries and as such the Congress was the only dependable organisation for the Muslims. It was held that the reading out of extracts from that publication amounted to an attempt on the part of the candidate or his agent to interfere with the free exercise of electoral right and also the distribution thereof would have the same effect.

Sub-section (2) of section 123 of the Representation of the People Act reads as follows:—

(2) Undue influence, that is to say any direct or indirect interference or attempt to interfere on the part of the candidate or his agent or of any other person, with the free exercise of any electoral right:

Provided that:—

- (a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—
 - (i) threatens any candidate, or any elector, or any person in whom a candidate or an elector is interested with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or
 - (ii) induces or attempts to induce a candidate or an elector to believe that he or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;
- (b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

Undue influence naturally amounts to a corrupt practice under the Act. It is apparent that in this pamphlet Ex. 2 there is a threat of divine displeasure or spiritual censure. The language of the pamphlet is not on the border line at all but it is on the wrong side of the border.

In India the term undue influence has been given a statutory meaning under the Representation of the People Act as indicated but nonetheless and our attention was drawn to the Down case which is reported in O'Malley and Hardcastle Election Petitions, Volume 3 at page 115 as a guide to the meaning to be attached to the term. There what had happened was that an article had been published to suggest that the secrecy of the Ballot Act could be tampered with, at any rate, with very great probability of impunity. It was contended that that publication would create great alarm in the mind of persons who believed it or at least some of them and therefore the election was rendered not free. To this contention Baron Fitzgerald in his judgment gave the reply that it would only be by the ignorant electors that a representation that the Ballot Act or any Act of Parliament could be violated with a reasonable prospect of impunity would be believed. The learned Baron then said that there was not sufficient evidence to show that the apprehensions set out in that article were present to the mind of the sane voters and after taking into consideration the extent of reasonable apprehension, which could be raised by the article and after making a fair deduction from the only class of voters who could possibly believe in the contents of the article the learned Baron recorded his conviction that the election was a free election. On the other hand Mr. Justice Barry had no doubt that the article had the effect of interfering with the franchise and he had no doubt that there were in that constituency to be enumerated not by scores but by hundreds, men who would exercise the franchise in one way if the voting was open, and another way if it were under the shelter of secrecy. He held that the election was not a free election. Shortly, but therefore, the essence of the Down Case seems to be that if free election was made impossible by what was said and done then it cannot be upheld. In England also a person is guilty of corrupt practice if he is guilty of undue influence brought about by temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting. (See Halsbury's Laws of England, Simond edition, page 223, paragraph 387). In paragraphs 388, 389, 390 and 391 thereof forms of undue influence are more specifically set out and the law relating to undue influence has been stated fully. Having regard to the test laid down in sub-section (2) of section 123 of the Representation of the People Act by the Indian Legislature and the general conception behind undue influence we clearly hold that Ex. 2 constitutes an undue influence. We might here say that we do not think Ex. 1 to have constituted undue influence and we have already found that a little earlier.

There cannot be the slightest doubt if an agent of a candidate is proved to have exercised undue influence, that would constitute a corrupt practice and the election would be avoided [See Louth, Northern Division, case (1911), 6 O'M & H. 103 at p. 143].

We may now quote sub-section (4) of section 123 of the Representation of the People Act, which lays down that:—

"The publication by a candidate or his agent or by any other person of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the persona's character or conduct of any candidate, or in relation to the candidature, or withdrawal, or retirement from contest, of any candidate being a statement reasonably calculated to prejudice the prospect of that candidate's election."

Also constitutes a corrupt practice.

It is contended that Ex. 2 paints the petitioner at least as a Pakistani and that that statement has not been proved to be true and whosoever caused the printing and publication of that a pamphlet could not believe it to be true. No evidence has been produced in order to show that the statement is true on behalf of the respondent. Our finding in regard to Ex. 1 has already been given that it does not offend the law. The main question regarding Ex. 2 is whether its distribution with the consent of Dr. Keskar has been proved or not by the petitioner.

We now come to consider the evidence of the printing of Ex. 2. P.W. 15, Dashrat Prasad Pathak states that he was a compositor in the Janmat Press. The pamphlet shows as having been published in that press. Dashrat Prasad Pathak brought the original manuscript of Ex. 2 marked Ex. 8. He said that he cannot say who gave the original manuscript to the press for publication and he says that he did not know in whose hand writing it was. On the date he came to give evidence he was not working in the press. He said that the press was owned by Sri Kedar Nath Singh but it was closed in 1957. The press according to him ceased to work two months after the election of 1957. The witness said that his duty was only to compose the material and all material for publication was placed before the manager who was a person other than Sri Kedar Singh. There were three compositors in the press and the witness said that he had composed the contents of Ex. 8. He denied having made a statement in an earlier part of his deposition that he had not composed this manuscript. What he stated was "I did not compose this Ex. 8". It is not clear whether earlier the witness was denying being one of the compositors of the leaflet or he was denying being the author of Ex. 8, i.e., the original manuscript. He says that Kedar Nath Singh handed it over to him, and had asked him to produce the manuscript before the Tribunal. He denied being related to Kedar Nath Singh or that he was working with him. His village is 8 or 9 miles from Sultanpur. He says that Sri Kedar Nath Singh could not come and therefore he asked him to file this document before the Tribunal. He said that Kedar Nath Singh did not give anything in writing to file this document. He replied to a question and said that he had not come to depose after taking money from the petitioner. We have set out this witness's evidence in detail because a suggestion is made about the circumstances of the production of Ex. 8, the original manuscript, from which Ex. 2 was printed, and the suggestion was that there might have been some sort of a conspiracy between Sri Kedar Nath Singh and Rudra Pal Singh subsequent to the election to bring this Ex. 2 into existence and to produce it and Ex. 8 before the Tribunal. There was a suggestion made in cross-examination by Dr. Keskar that Rudra Pal's loyalty was doubtful. This is what he said: "Sri Rudra Pal Misra is a Congressman. I am not sure whether he was working for me along with other workers as there was a doubt about his loyalty. I had doubt about him because he was a man of Sri Ganpat Sahai. I know it from before the election. He was not openly opposing the Congress candidate during the election. He might have been my polling agent at one of the places in Musafirkhana constituency. I saw him once or probably twice during the election days. He was neither suspended nor expelled from the Congress during the election days. I was not aware of his working for me or for other Congress candidates." Earlier he, Dr. Keskar, had stated that he had met Rudra Pal Misra two or three times and that he was not working for him as the active worker. He said that he never authorised Sri Rudra Pal Misra to get exhibit 2 printed and distributed and if he had printed such a notice it was not with his consent or knowledge. We do feel that Kedar Nath Singh, the owner of the press, should himself have brought

this document Ex. 8 and should have been put into the witness box. In our opinion it would not be safe to place implicit reliance on the testimony of Dasrath Pathak. It is to be noted that this witness Dasrath Pathak produced Ex. 8 only. Vidya Dhar Bajpai proved the writing. He has definitely said that the manuscript was in the hand writing of Sri Rudra Pal Misra and it also bore his signature. From what this witness has said it is evident that he could have familiarity with the hand writing of Sri Rudra Pal Misra. From the cross-examination it appears that this witness is hostile to the Congress but in view of the fact that no evidence exists that this pamphlet is not in the hand writing of Rudra Pal Misra, it is difficult to say that the evidence of Vidya Dhar Bajpai may not be true in regard to Rudra Pal's hand writing appearing on Ex. 8. So far as Rudra Pal Misra is concerned he has not been produced by the petitioner. It may be suggested that that was because he was not likely to depose in petitioner's favour. But one could not expect the respondent either to put Rudra Pal Misra in the witness box because if Dr. Keskar is correct and there seems no reason to doubt his statement his loyalty was not above board. This pamphlet if it was caused to be printed and published during the election, must have been printed and distributed without the consent of Dr. Keskar stated by him. It is obvious therefore that if Rudra Pal Misra had been put into the witness box he would have tried to fasten knowledge of the pamphlet on Dr. Keskar. While we are prepared to believe that the pamphlet is the handiwork of Rudra Pal Misra we do not think that upon the evidence of Dasrath Pathak it can be said to be established that it necessarily came into existence during the course of the election. The pamphlet is not even a border line pamphlet and it seems to have been penned rather to damage Dr. Keskar than to damage the petitioner. We must say that we have altogether or uneasy feeling in our mind how this pamphlet came into existence and the benefit of that feeling must in an election petition go to the respondent.

We now come to consider the question of distribution of printed pamphlet Ex. 2. The distribution is said to have taken place at Raniganj Bazar, Pakhrault, Musafrkhana, Lamhuwa, Garapur and Sheogarh.

Raniganj Bazar.

P.W. 1, Paras Nath is a witness who speaks to distribution of Ex. 1 also. He says that a notice like Ex. 2 was given to him at Raniganj and that Sri Rudra Pal Misra was distributing similar notices. The distribution was made two days prior to the polling. Rudra Pal Misra was accompanied by Dr. Keskar, Sri Gur Prasad Singh and Sri Shyam Lal. The witness stated in cross-examination that he would have objected to the distribution of notices like Exts. 1 and 2 if his party was concerned. He said that in that case he would have informed the party leaders about the distribution of such notices. This witness was a propagandist for the Praja Socialist Party. According to him the petitioner had come to his village to seek votes but had not approached him personally to obtain his vote in his favour. It is to be noted that Paras Nath Dwivedi is friendly to Ganpat Sahai of Sultanpur. He said in cross-examination that since the date of the distribution of the notice till the date when he was deposing he had had no talk with the petitioner. He has admitted that he was opposing the Congress and therefore did not desire to see it successful in the election. Nonetheless he said that Sri Rudra Pal Misra handed over to him a copy of Ex. 2 at Raniganj. In our view it is doubtful that a pamphlet should be handed over to the propagandist of the other side. He was however not able to give the name of any person who was present there. He came to the conclusion that the Congress was acting dishonestly but he did not protest to Rudra Pal Misra. He says that Ganpat Sahai wanted a ticket from the Congress party but he was refused. He could not say whether Sri Ganpat Sahai Varma, Sri Vidya Dhar Bajpai and the petitioner were of the same party. He was unable to say whether Ganpat Sahai Varma was instigating the petitioner to fight this case. We think that the fact that this pamphlet was said to have been distributed two days before the election has to be noticed because nothing has been shown to suggest that the election had reached such a precarious stage that it became necessary for Dr. Keskar to take a gamble with such a leaflet. There is evidence to suggest that on the last occasion when the petitioner stood against Dr. Keskar he was heavily beaten. Dr. Keskar's workers therefore could not have been in a panic.

Rampal Pandey is the next witness of distribution of Ex. 2 two days before in Raniganj Bazar. According to this witness Rudra Pal was personally distributing this notice and Dr. Keskar, Sri Guru Prasad Singh and Sri Shyam Lal were present there. We are more than doubtful whether Rudra Pal Singh who

is President of the District Congress Committee was himself distributing the notices and whether Dr. Keskar had permitted him to do so. This witness has again got connection with the Praja Socialist Party.

P.W. 10. Ram Khelawan also speaks about Ex. 2. He says that two days before the date of polling he saw Dr. Keskar accompanied by Sri Rudra Pal Misra and others and the last named was distributing some notices while standing on the ground and Dr. Keskar, Guru Prasad Singh and Shyam Lal were sitting in the car. The witness saw notices like Ex. 2 being distributed. This witness said that he had gone to Raniganj in connection with canvassing for his own candidate Sri Awadesh Narain Singh. He saw the distribution from a distance of about 50 yards and he also received one of the notices which he handed over to Sri Awadesh Narain but he did not tell the petitioner about the distribution of Ex. 2 nor did he protest to Sri Rudrapal about the distribution. When he handed over the notice to Sri Awadesh Narain the latter did not put any question about it. Why he should hand over the notice to Awadesh Narain and why he did not tell the petitioner instead is difficult to understand? The witness was unable to give the name of any other person who also received the notice at the time of the distribution. Rudra Pal resides in a village which is four miles from his village and it is apparent that this witness had known Rudrapal for some years yet he did not protest to Rudrapal why he was distributing this improper type of notices. He says that he had particularly gone to take the notice. He denies knowing the petitioners but he has admitted that the petitioner's workers and Awadesh Narain Singh's workers worked together. He said that he received a summons in this case from a musalman who was a man of the petitioner.

Ram Khelawan has clearly stated that he did not want the Congress to win the election; he wanted the independent party to win. Ram Khelawan does not strike us as a witness whose statement we may rely on.

Sadhu Ram P.W. 21 belongs to the Socialist party. He says that he saw the notices similar to Ex. 2 in the hand of Rudra Pal but he did not receive a notice from Sri Rudra Pal. He says that Rudra Pal only showed such notice to him and that he had read the notice during the election days. He says that his impression after reading the notice Ex. 2 was very bad. He says that he saw the notices being distributed two days before the date of poll. Dr. Keskar, Guru Prasad Singh and Shyam Lalji and others were present at the time. He saw similar notices pasted on the walls in the villages and in Bazar. There is no allegation of pasting at any place. Then this witness says that he talked with Rudra Pal afterwards. Rudra Pal said that notices Ex. 2 were got printed and circulated at the instance of Dr. Keskar. The question to which this reply was given was objected to. We think it was fortunate that he was allowed to answer it because we doubt very much whether if in point of fact Rudra Pal was not antagonistic to Dr. Keskar he would impart such information to the witness who belonged to another party. He says that he did not complain to any authority what he had learnt about the distribution of Ex. 2. We think it is not believable that if he had come to know from Rudra Pal that Dr. Keskar was at the back of this pamphlet he would have kept quiet and not informed the petitioner or some authority. We do not think on the basis of the aforesaid evidence we can hold that distribution in Raniganj Bazar is proved.

Pa-Khrauli.

There is only one witness or Pakhrali and he is Surya Bux Misra P.W. 12. He said that there was a meeting at Pakhrali 6 or 7 days before the polling and notices like Ex. 2 were distributed at the meeting. Dr. Keskar was present at the meeting. It was at a school building. He said that he received a notice similar to Ex. 2 but he had misplaced the notice. It is noticeable that the witness has come to depose about the notice yet has misplaced it. He pretends to be absolutely unconnected with the petitioner and says that he has no connection with him. He sees him in the bazar sometimes and he knows him to be Haji Saheb and he also says that people say that he deals in bones. In these circumstances it is difficult to determine how the information that Sri Surya Baksh Misra could be a witness on this point and other points which the petitioner wanted to prove came to the knowledge of the petitioner. It is very easy for person to say that he was notices being distributed and then to say that he has lost the notice and so explain away his failure to produce one. We cannot find that the distribution of notice at Pakhrali is proved.

Musafirkhana.

P.W. 9 Lachhmi Narain says that one day prior to the date of polling he saw Dr. Keskar and one Rudra Pal sitting with him in a car. Then he said that Rudra Pal was standing on the ground near the car. He says that Rudra Pal was

distributing some notices and then he says "they were notices of this size". This was said when the witness was shown Ex. 2. He then said later improving his statement that he had got one of the notices when they were being distributed by Rudra Pal. He has not produced the notice he says he had received. Obviously he was not interested in the notices that were being distributed by Rudra Pal because he has not said that he read the contents of the notices which were being distributed. All that he says is that the notices that were being distributed were of the size of Ex 2 and one was given to him. This witness seems to be a chance witness. He lives quite a distance away from Musafirkhana and the reason he gives for having gone there is not very convincing. The evidence of Lachhmi Narain is, in our opinion, insufficient to establish that the notices with the contents of Ex 2 were seen being distributed by him.

Lamhuwa Garapur and Sheogarh.

P.W. 2 Zamin Ali speaks to distribution of the notice in these three places. We have not believed him in another connection. He again says that distribution took place two or three days before the election. He says that he could not give the date when he visited Lamhuwa or Garapur. He says that he informed the petitioner of the distribution of the notice the very day and he went to Sultanpur and handed over a copy of the notice to the petitioner. He says that to his knowledge Haji Saheb did not address any meeting at all. If it was a fact that such notices were distributed we consider it quite unlikely that the petitioner would not take some steps to repudiate the contents and to protest if the information had been received by him as this witness and others suggest. The failure of this witness to specify the dates and the general trend of his evidence suggests that he is not a reliable witness. We cannot, therefore, hold that the distribution at these three places has been proved on the solitary testimony of this witness. It must be noticed that this distribution is said to have taken place only 2 or 3 days before the polling took place though some witnesses say that it took place 6 or 7 days. Why an appeal couched in these terms should have been thought necessary by Dr Keskar and his advisers at the last moment is not at all apparent because there is nothing to suggest that a desperate effort was necessary at the last moment. Our conclusion in regard to Ex 2 is that we are not at all satisfied in regard to the evidence of distribution, and we do not feel certain that it has been affirmatively proved that this pamphlet came into existence during the course of the election. Our conclusion is strengthened by what Dr Keskar has said in regard to this notice Ex. 2. We may state that on behalf of Dr Keskar evidence has been tendered in order to deny that any such distribution of notice like Ex. 2 took place. We need not numerate the witnesses inasmuch as we have disbelieved the evidence tendered on behalf of the petitioner, but we may say that the evidence of such defence witnesses as we have pursued leads us to conclude also that there was no distribution of any pamphlet like Ex. 2.

Issue No. 4 relates to a systematic communal appeal made in speeches Issue No. 7 is framed as follows:—

"Whether the allegations contained in paragraph 11(c) of the petition are correct and was any corrupt practice committed as alleged in this paragraph within the meaning of section 123(3) of the Representation of the People Act?"

Paragraph 11(c) of the petition states "that it was also given out in public meetings by respondent No. 1 Sri Kunwar Ranjanaya Singh and respondent No. 1's other supporters workers and canvassers that the petitioner was Pakistani Agent and if elected to the Lok Sabha he would vote in favour of Kashmir's accession to Pakistan and that the Hindus should not, therefore, support him, but should instead cast their votes in favour of the respondent No. 1. The same propaganda was also contained in the notice App II and III. All this clearly amounted to a systematic appeal by respondent No. 1, his agents, and workers to electorates to vote for him and refrain from voting for the petitioner on grounds of caste, race for community and comes within the mischief of section 123(3) of the Representation of the People Act. The result of this propaganda was that Shri Vrijai Pal Pandey and Smt Savitri Devi who were candidates from the Assembly Constituencies of Amethi and Lamhuwa respectively comprising the said Parliamentary Constituency had promised their full support if the petitioner withdraw the same." We were not addressed in regard to the allegations made in paragraph 11 (d) of the petition. We have already dealt with Exs. 1 and 2 Ex. 4/1 & 5/1, are also relied upon as a document containing systematic appeal on the lines alleged. We do not think that either of these two documents can be said to constitute a systematic appeal of the character alleged by or on behalf of the petitioner Ex 4/1 is some sort of a news item published in a paper which says

that Vijai Pal Pandey had denied that Sri Abdul Wahid and he are working in consort. Ex. 5/1 denies that Vijai Pal Pandey is proceeding to make an appeal on lines of castes. It also denied that Vijai Pal Pandey Haji Abdul Wahid were working together. We will now examine the evidence which has been placed before us in this connection.

P.W. 1 Paras Nath has stated that 7 or 8 days before the election in Adaru Baba Ka Mela Dr. Keskar, Kr. Ranajai Singh, Deoki Din Sharma and others had addressed meetings and all these three men had addressed the meetings in this way that Haji Sahib was a dealer of bones, and would advance the cause of his trade if elected, that he was a Pakistani agent and that he would support the cause of Pakistan in matters of the Kashmir situation. This witness has said that since the day of the election until the day he was deposing he had had no talk with the petitioner but he later admitted that he met the petitioner at Allahabad previous to his deposing in Court at the crossing of the Beli Road. He says that the petitioner and he were staying at the same place. This desire on the part of the witness earlier in his deposition to disassociate himself from the petitioner creates a suspicion in our mind. He has admitted that during the election he has opposed the congress all the time. That by itself may not be a reason for disbelieving this witness but we have to consider the probability of the type of speeches he says were made by Dr. Keskar and his supporters having been made. We are unable to believe that Dr. Keskar would make a speech like the one attributed to have been made by him when 25 per cent. voters were Muslims. The witness has not given us a full resume of the speech which Dr. Keskar has made. Dr. Keskar would not confine himself to the statements which are alleged to have been made by him, he would probably speak at some length and would put the congress programme before the electors. If the speech had been reproduced before us more fully we might have thought that it is possible that in the heat of the moment something may have been said but even that possibility has got to be ruled out because the speeches attributed to have been made are not speeches of a general character supporting the congress programme but they merely constitute a direct communal approach. We do not think any intelligent person even if he wanted to take a communal line put the matter as blatantly as is suggested, much less a person who has experience of public speaking. In any case Paras Nath is the only witness on whose testimony reliance is placed by counsel for the appellant in regard to Adaru Baba Ka Mela and we are not prepared to act, in all the circumstances on his evidence alone.

Gauriganj.

P.W. 5 Rampal says that 15 or 16 days before the polling Dr. Keskar and Kr. Rananjay Singh addressed a meeting at Gauriganj. Dr. Keskar repeated the very same speech that he had made on the inauguration of the Development Block. According to this witness this inauguration was 15th January 1957. We have already disbelieved the making of that speech. The witness said that Kr. Rananjay Singh said that Haji Abdul Wahid was a Pakistani agent and that he carries on business in cow bones, that the congress had stopped cow slaughter for which his business had been effected and he also said that if any Hindu votes for Haji Abdul Wahid he would go to hell because his sin would be the same as of killing a cow. We are wholly unable to believe that a speech on this line could have been made while Dr. Keskar was there and Dr. Keskar would not have intervened because it would have been apparent to any person of ordinary intelligence that making a speech of that nature meant inviting an election petition. This witness has got connection with the Praja Socialist Party. We have disbelieved his evidence in regard to Ex. 1 and 2. According to this witness on 16th January 1957 Dr. Keskar had spoken for half an hour and he had said that public had given him opportunity for five years and a Development Block was opened through his efforts and that public should cooperate with this development scheme. Then he said that on that day Dr. Keskar addressed the sabhapatis and turned to the question of relations of India and Pakistan and then turned to the question of Kashmir. Dr. Keskar is described to have said that Haji Abdul Wahid was a begotted Muslim and that he carried on the business in bones. The witness has admitted that so far as he is concerned he did not want the congress to win. We may point out that Kalkan was not expressly mentioned in the petition as a place where such speeches were made. This witness's name appears in the pamphlet Ex. 1 and he has an animus. We have disbelieved his evidence on other points and we cannot rely on his single testimony for holding that a speech was made as alleged in Kalkan. Learned counsel for the appellant relied only on the evidence hereinbefore discussed to establish a systematic communal appeal. We do not find that this evidence establishes the charge. The respondent has produced several witnesses to deny the making of such speeches. We need not refer to such evidence except to say that a reading of the respondent's evidence strengthens our view that no such

speeches were made as alleged. We find no reason to disbelieve Dr. Keskar's evidence because we think it is highly improbable that any person of intelligence would make such a speech or encourage or allow the making of such speeches. Despite the fact that this witness is closely associated with the petitioner throughout no effective step was taken by the petitioner to repudiate by pamphlet or otherwise what was being said against him. We are almost certain that there would have been counter pamphleteering and strenuous denial by the petitioner if in fact earlier and as Gauriganj speeches of the nature attributed to Dr. Keskar and his workers were being made. The petitioner has not gone into the witness box to give any explanation.

P.W. 17 Jagat Narain also gives a similar version of the Gauriganj speech. We have already disbelieved this witness in regard to the distribution of notice Ex. 1. Gauriganj is about 10 or 12 miles from his village. We doubt whether this witness travelled all this distance in any case having gone there he did not protest against the speeches nor he informed the petitioner about the meeting nor did he give any information to the authorities but on reaching his village he did call a meeting to protest against the speeches. He is unable to give the name of any other person who was present at the meeting besides himself. We do not think that Jagat Narain's evidence convinces us any better than that of Rampal in regard to what is alleged to have been said at Gauriganj.

In regard to Kalikan there is the evidence of P.W. 18 Vijai Pal. The Kalikan speech was in the third week of February, Kr. Rananjay Singh was canvassing for Dr. Keskar. This is what the witness said in regard to the speech:—

“He was canvassing in this way that people should not vote for Haji Ji as he was a Pakistani agent. He also said that he was doing business of a butcher and was a trader in bones. He also said that after great effort he had stopped cow slaughter and that if people do not vote after taking into consideration all matters cow slaughter will start again.”

We are not prepared to believe his uncorroborated evidence moreover his evidence does not prove that Rananjay Singh spoke with the consent of Keskar.

Issue No. 10 relates to Exts. 1 and 2. In the petition the charge is set out with reference to this issue in paragraph 11(f) in the following words:—

“(f) That the publication of the notice (App. II and III) as referred to in sub-para (a) of para II, besides falling within the ambit of sub-sections 2(a)(11) and (i) of section 123 of the Representation of the People Act also amounts to publication by respondent No. 1 and by his agents, and workers of a statement of a fact which was false to their knowledge and belief and was calculated to prejudice the prospects of the petitioner's election. It was also, therefore clearly a corrupt practice as defined in section 123(4) of the Representation of the People Act.” The written statement denied the allegations contained in paragraph 11(f). The issue itself was framed by the Election Tribunal in the following words:—

“10. Whether the alleged publication of the notice referred to in paragraph 11(a) of the petition constitutes the corrupt practice as alleged in the petition within the meaning of section 123(4) of the People Act?” We have already discussed the evidence in regard to these two notices and have come to a finding of fact that the notices Exs. 1 and 2 have not been proved to have been distributed as alleged by the petitioner. The other findings under issues Nos. 4 and 5 finally disposed of this issue also against the petitioner.”

We now come to issue No. 11 which relates to the hiring of ekkas and rickshaws at Raniganj. The allegations in this regard are set out in paragraphs 11(g) and 11(g)(1) of the petition. Paragraph 11(g) runs as follows:—

“(g) That the respondent No. 1 himself and through his active workers, supporters and agents e.g. Sarv Sri Deokaldin Sharma, President, District Board, Sultanpur, Ram Jiwan Dube, President, District Congress Committee, Gur Prasad Singh, M.L.A. Rama Kant Singh a Congress candidate for the Amethi Assembly Constituency comprising the said Parliamentary Constituency and others engaged a number of ekkas and rickshaws to convey the voters to the polling stations and thereby committed the corrupt practice as defined

in section 123(5) of the Representation of the People Act." Paragraph 11(g)(1) states:—

"The ekkas and rickshaws referred to in "aforesaid sub-paragraph 11(g) were hired and procured to convey the voters to the polling stations on 9th March 1957 at Lambhua and Ramganj by respondent No. 1 and his workers and supporters. The ekkas and rickshaws were hired on 8th March 1957 by respondent's workers Shri Bankey Behari and others with the consent of the respondent No. 1." Both these paragraphs were denied by Dr. Keskar in his written statement. In consequence of this denial issue No. 11 was framed in the following words:—

"Whether the allegations contained in paragraphs 11(g) and 11(g)(i) of the petition are correct and was any corrupt practice committed within the meaning of section 123(5) of the Representation of the People Act?"

Evidence in regard to this issue is provided by three witnesses namely P.W. 2 Zamin Ali, P.W. 3 Nageshwar and P.W. 4 Ram Sukh. The evidence of Zamin Ali has already been examined when dealing with other issues. He says that he was polling agent for the petitioner at Ramganj polling station and that on the polling day he saw many voters being taken to the polling station on rickshaws and ekkas carrying Congress flag and that were 6 or 7 such rickshaws and six or seven ekkas. He says that Bankey Behari Vaidya and Bhagwati Din Singh were working for Congress and they were bringing voters on these rickshaws and ekkas. He says that Ram Sukh and Ganpat rickshaw-pullers told him that they had been engaged by Bankey Behari on behalf of Dr. Keskar. According to Zamin Ali voters were being brought from villages Ramganj, Durgapur, Asrawan and another village, and they were mostly old men and women. According to him about 100 or 123 such voters were brought to the polling station on these rickshaws and ekkas. The witness was cross-examined on this point. He admitted that all the rickshaws and ekkas were numbered, yet he did not note down the number of any of these vehicles but he says that he noted down the names of the drivers on a piece of paper which he has not preserved. The persons whose names he noted were Ganpat and Ram Sukh. Ram Sukh, however, has not been produced. They are both rickshaw drivers. He says that he has not noted the name of any of the ekkha drivers. He further stated that he informed the petitioner about the names of rickshaw pullers. He was unable to give addresses of Ganpat and Ram Sukh rickshaw pullers. The witness admitted that he knew that it was against the election rules to provide ekkas and rickshaws and he says that he verbally complained to the Election Officer but he did not give anything in writing to the said officer. The witness said that the Polling Officer had told him that he was going to ask the party not to bring the voters on these vehicles, but the officer did not ask the Congress party to refrain from bringing the voters on vehicles. He says that even then he did not complain to the polling officer in writing. We doubt whether he would have remained silent if even after complaining no heed was taken. His story cannot be true and there is no corroboration from the officers to whom complaint is said to have been made. He admitted that there was nothing on the rickshaws to show that they had been hired for Dr. Keskar but he said that they were carrying tri-colour flags. The witness says that he saw the ekkas and rickshaws from distance of about 20 steps and in all he saw 5 or 6 ekkas and 5 or 6 rickshaws. If the witness is to be believed he took up the matter with the polling officer. Therefore it is rather surprising that he did not take down the numbers of either of the rickshaws or ekkas. It is also surprising that he merely made a verbal complaint to the polling officer and not in writing. In any case the polling officer has not been produced in order to corroborate the statement of this witness. The witness even did not care to take down the names of the ekkha drivers and took down the names of two rickshaw-walas out of whom only one was produced. It is always possible to make allegations of this nature against candidates. Merely because there were congress flags on certain rickshaws it would not show that those rickshaws had been hired by Dr. Keskar.

P.W. 3 Nageshwar says that he reached Ramganj Congress Office at about 3 P.M. and Dr. Keskar arrived there at about 4 P.M. According to the witness Dr. Keskar said that no voter should be left. Then Bankey Behari told Dr. Keskar that some women and old men would not be able to come unless conveyance was arranged. Thereupon Dr. Keskar said "make what arrangements you think proper". Then, according to the witness, some rickshaw pullers were called and Dr. Keskar was present in the office at that time. After some time Dr. Keskar left the place. On the polling day, the witness says, he brought 8 voters to Ramganj polling station from village Khanpur on two ekkas. and seven voters

from village Bibapur on two ekkas and Bankey Behari paid him Rs. 3 as his remuneration for the work on the polling day. This witness has not made any statement as to the names of the ekkawalas or as to what hire he paid to them or the names of the persons he brought. He says that he did not belong to the Congress party and he does not work for the congress but nonetheless he said that at the election he worked for Dr. Keskar for 4 or 5 days, canvassed for him and brought voters. He says that he brought the voters only once from Bhikapur. Some voters were also brought from Khanpur. The distance between these two places is a furlong and a half. He says that when he was bringing these voters there were no workers with him. In cross-examination he said that he did not disclose the names of the ekka drivers to the petitioner. He says that he knows Zamin Ali and describes him as the pairokar of the petitioner yet he did not disclose the names to Zamin Ali either, although Zamin Ali asked for the names. According to this witness upto the date of his giving evidence he had had no talk with the petitioner nor had he met Zamin Ali since the day of the polling. The witness could not say how the petitioner and his party knew that he had canvassed for Dr. Keskar and had brought voters to the polling station on ekkas. The witness did not remember who was working for the petitioner at Ramganj polling station and who were the workers for Dr. Keskar at that polling station. It seems to us fairly evident from what has come out in the evidence of this witness that he is a got-up witness.

Ram Sukh P.W. 4, is a rickshaw puller. He says that he plies rickshaw between Sultanpur and Ramganj and he was engaged a day before the polling on behalf of Dr. Keskar at the Congress office when Dr. Keskar was present. He was paid a sum of Re. 1 as advance and a sum of Rs. 4 after his work. On the polling day, he says, he brought old men and women from Ramganj and Durgapur. According to his evidence he made 10 or 12 trips and worked from 7 A.M. to 5 P.M. He brought about 30 or 35 voters and took them back also. These voters were all old men and women. He said that he knew no one besides Dr. Keskar and Bankey Behari. He said that at the time of the polling he saw Zamin Ali who had asked him whose voters he was bringing and he said to him that they were voters for Dr. Keskar. According to the witness Zamin Ali took down his name and address on a piece of paper. He says Zamin Ali also took down the names of other rickshaw pullers. He then said that he did not give any address to Zamin Ali as Zamin Ali used to see him from before and he knew him. Obviously witness is a friend of Zamin Ali. The payments made to him were not recorded anywhere. He says that he used to visit Ramnagar for carrying passengers to Sultanpur. Even in examination-in-chief this witness does not give the number of his rickshaw. Names of several rickshaw pullers were taken by Zamin Ali but this witness alone has appeared to give evidence. He alleges that he plies a rickshaw for the last three or four years but he does not give the information whether the rickshaw is his own or a hired one and from whom. It appears that he is in touch with Ram Kishore Tiwari and that the latter gave him summons to appear in court. This witness denied that he had been convicted previously, if the numbers of the rickshaws and ekkas had been given the statements that ekkas and rickshaws were hired by Dr. Keskar could have been checked up. We do not feel that the evidence of these three witnesses is either satisfactory or sufficient to establish the charge. We may mention that Dr. Keskar has definitely denied that Sri Bankey Behari hired any rickshaw or ekka on 9th March to carry voters to the polling station and he has definitely stated that Sri Bankey Behari did not hire any such conveyance on the 8th March 1957 to his knowledge or consent. On behalf of Dr. Keskar evidence has been produced or several witnesses negativing the story in regard to the hiring of rickshaws and ekkas. Deokali Din R.W. 1, Bukhare R.W. 2, Gaya Prasad R.W. 9, Bhagwati Din Singh R.W. 12, and Dudai R.W. 25, are witnesses in this regard. We have also perused their testimony. That taken with the denial of Dr. Keskar strengthens our conclusion that this story of hiring of rickshaws and ekkas is not at all a *bol* story and is not a believable fact. We are unable to believe that the bringing of voters in hired vehicles even though this was known would have been allowed to go on without there being a first class road about it.

We now come to issue No. 20. It relates to allegations made in paragraph 11(p) of the petition. The allegation are that Sri Ghor Pade, Private Assistant of respondent No. 1 is an employee of the Central Government and is being paid by the Government to assist the respondent only in his official duties, but Mr. Ghor Pade came to the constituency with Dr. Keskar and stayed with him and was incharge of his election. In the written statement this allegation was specifically denied and it was said that Mr. Ghor Pade occasionally came and stayed with Dr. Keskar in connection with official duties and had no connection with Dr. Keskar's election. It was also pleaded that paragraph 11(p) of the petition is

vague and will tend to prejudice, embarrass and delay the fair trial of the petition and should, therefore, be struck out. Issue No. 20 was framed by the Tribunal as follows:-

"20. Whether the allegations contained in paragraph 11(p) were correct and is the validity of the election of respondent No. 1 effected."

The evidence in this regard consists both of oral and documentary evidence. Ex. 10 is a register of the polling station. There is an entry on page 8 of the register showing the delivery of the list of polling stations from the District Election Office. The signature of Sri Ghor Pade in token of the receipt of the same appears against this entry. The charge is that the services of Sri Ghorpade who was a government servant were utilised by Dr. Keskar for taking delivery of the list of polling stations from the District Election Office. The oral evidence consists of the statements of Izzat Ullah Khan, Triloki Nath Srivastava, Sadho Ram Mori and Bindeshwar Prasad Tiwari who was produced to prove the signature of Sri Ghorpade, and the evidence of Vidyadhar Bajpal.

Sri Izzat Ullah Khan was the District Election Officer of Sultanpur at the time of the relevant election. He said that he was not definite but the election expenses of Dr. Keskar submitted on 15th April were probably brought by his Private Secretary so far as he remembers and he was not sure. Along with the election expenses there was a covering letter from Dr. Keskar, but he says that he does not remember the name of the Secretary of Dr. Keskar who had brought the said election return. This witness also stated that he had brought a register showing distribution of list of polling stations in the General election 1957. Page 8 thereof was written by Sri Triloki Nath whose hand-writing he knew. He said that he could not say who took delivery of the list. He was unable to identify the signature of the respondent. He also said that he saw the Private Secretary of Dr. Keskar coming to the election office but he could not say for what purpose the said Secretary came.

So far as the submission of the return of election expenses was concerned even if it be assumed that the Private Secretary mentioned by this witness was Sri Ghor Pade the election had already come to an end and it would be of little consequence that Shri Ghor Pade was employed to do so trifling and formal a matter as the carrying of the election expenses return to the District Election Office. The said action even if it was of Sri Ghor Pade could not remotely be said to further the prospects of the election of Dr. Keskar. If the intention of getting this fact that Sri Ghor Pade took the election return to the election office is that it would show that Ghor Pade was being employed for the purpose of the election work generally we do not think that even if Ghor Pade took the election return after the election that would establish that during the election Ghor Pade was being employed by Dr. Keskar. Triloki Nath also says that he was unable to state who took the delivery of the list of polling stations. According to Triloki Nath Srivastava during the election days the Private Secretary of Dr. Keskar used to come to election office but he could not say how many times he visited the election office. The witness said that Dr. Keskar himself never came to the election office but he said that he would not be able to say if Dr. Keskar had come in a car and halted outside the election office and sent his Private Secretary inside the office. The witness was unable to say how many private secretaries Dr. Keskar had. The witness was unable to give the time and dates of the visit of Dr. Keskar's Private Secretary to the election office. It will be seen from this evidence that it cannot be said that Ghor Pade is identified as the Private Secretary who visited the election office. The charge is in respect of Ghor Pade and it should have been established that it was Ghor Pade who used to go to the election office. It is not even stated by this witness for what purpose Sri Ghor Pade came to the office and the one precise purpose for Ghor Pade's visit which may be said to be established is that he visited the election office once for the purpose of getting a list of polling stations.

Sri Sadho Ram belongs to the Socialist Party. He says that he met Sri Ghor Pade, Private Secretary of Dr. Keskar in the dak bungalow, that Sri Ghor Pade was working for Dr. Keskar in his election work. This witness was cross-examined about the Sultanpur dak bungalow where he said he met Sri Ghor Pade and he said he could not say how many rooms there were in the dak bungalow. He is neither known to Sri Ghor Pade nor to Dr. Keskar. There is no office of the Socialist Party in the dak bungalow. There is no reason why he should have visited the dak bungalow. In any case he is unable to give the date of the day when he visited the dak bungalow accompanied by Sri Rudrapal Misra who is a friend of the witness. He says that Rudrapal Misra knew that the witness did not want the congress to be victorious in the election nonetheless he wishes us to

believe that Rudra Pal Misra took him to the bungalow. The witness admitted that the Private Secretary did the office work of the Minister. He said that he had gone inside the office. He admitted that he did not know English. He says that he found some papers lying on the table but he did not read them. He says that he had no talk with Sri Ghor Pade. Dr. Keskar was not present in the dak bungalow at the time. Altogether he stayed for 2 or 3 minutes in the dak bungalow. The witness says that Rudra Pal had gone to the dak bungalow to take notices like Ex. 2. He himself did not take the notice nor asked for it. He was unable to say whether Ghor Pade was doing Government work of the respondent No. 1 at that time. From what facts this witness inferred that Sri Ghor Pade was working for Dr. Keskar is not evident, and it is even not evident that the Dak Bungalow was being used as an election office by Dr. Keskar. He does not even say that Sri Ghor Pade gave any copy of notice Ex. 2 to Rudrapal. He only says that Rudra Pal had gone to get it. This brief visit by a person belonging to another party in the company of one of the agents of the candidate does not strike us as a probable story and we must say that we are not impressed by the evidence of this witness.

Sri Bindeshwari Prasad Tewari's statement has already been dealt with in another connection. He says that during the election the election office of Dr. Keskar was in Sultanpur P.W. Dak Bungalow, and Sri Ghor Pade was the incharge of that office. He says that he used to go to the District Election Office, and one day he met Sri Ghor Pade there who had gone to take a copy of the electoral roll. He said that the latter signed in one register after receiving the copy. This witness identified Shri Ghor Pade's signature. This witness is the District Secretary of the Praja Socialist Party of Sultanpur. His basis for saying that in the dak bungalow there was the election office of Dr. Keskar was that the congress workers used to go there for getting papers and expenses. The witness says that the congress workers had told him that they were visiting the dak bungalow to get papers and money. He says that he did not offer any money inducement to the congress workers in order to win them over, nor did he ask them to divulge all confidential matters to him. He was unable to say how much money was obtained by Congress workers from the dak bungalow. He said that he never went to the dak bungalow himself in order to check up the news received by him relating to the election office of Dr. Keskar. He said that he knew that Dak bungalow was the government property but he did not complain to any authority about the irregularity of using it as election office. It seems to us doubtful whether this person ever went to the Dak bungalow at all and it seems to us incredible that he would be taken into confidence by Dr. Keskar's workers.

The last witness is Vidya Dhar Bajpai. He is a Secretary of the Praja Socialist Party. He identified Sri Ghor Pade's signature. He says that in the last election of 1957 he saw Sri Ghor Pade working for Dr. Keskar in the Sultanpur Dak bungalow and he also saw him in the District Election Office. There were three rooms in the dak bungalow of which two were occupied by Dr. Keskar and one was occupied by Sri Ghor Pade. This witness has admitted that his wife was refused a congress ticket for the Assembly. He says that he was convinced that she had been refused the ticket unjustifiably. He says that he would not have left the congress organisation if his wife had not been refused a ticket. He also applied for congress ticket but withdrew the application. He says that since Dr. Keskar was also a candidate for Parliament he knew that he had no chance against him. Dr. Keskar had told him that it was useless for him to obtain a ticket for a seat in the Parliament. With this background this witness clearly has animosity against Dr. Keskar. The witness admits that the husband of Smt. Parbhavati Devi was a strong supporter of Dr. Keskar and admitted that his wife had filed an election petition against Smt. Parbhavati Devi. He admitted that Dr. Keskar appeared as a witness for Smt. Parbhavati Devi in that election case. He admitted that his wife had made allegations against Dr. Keskar and Smt. Parbhavati Devi. Disciplinary action had also been taken against this witness by the congress. He cannot therefore be friendly to that organisation either. This witness has gone the whole length and has suggested that Sri Ghor Pade was seen by him distributing posters, notices, papers, pencils and cash to the workers. The witness said that once in the month of February 1957 he saw Ghorpade handing over cash Rs. 125 or Rs. 150 to four or five workers. These workers were named by the witness. Sri Nazmi Ali was one of the workers but he could not say what amount was paid to this worker. According to the witness on the directions of Dr. Keskar Sri Ghor Pade was handing over some papers which were tied with a string. The witness said that he could not produce any of those posters. In spite of the fact that he had seen all this he complained to no authority about the illegal doings of Dr. Keskar and the acts of Dr. Keskar in treating the Dak Bungalow as his election office and availing himself of the services of Sri Ghor

Pade. He says that he did not protest to Sri Ghor Pade as to why he was doing the election work. He said that he did not do so because he had seen the District Magistrate and the other high officials working for Dr Keskar. Then he said as follows

'There can be no doubt that the District Magistrate and the Superintendent of Police were dishonest persons. I did not get it printed in any newspaper that Dr Keskar was using the dak bungalow as his election office and was obtaining the services of a government servant Sri Ghor Pade. As I was not interested in Haji Ji's election I did not take him to the dak bungalow to show him what was being done there. I did not ask the petitioner at that time to protest against this illegal act of Dr Keskar. I did not consider the Election Commission to be dishonest.'

In March 1957, according to this witness he was sent for by Dr Keskar and Sri Ghor Pade had come to call him. On each of the two occasions, i.e. once in the month of February 1957 and the second time in the month of March 1957 he stayed in the dak bungalow for about 15 to 25 minutes. The witness says that when Dr Keskar called him both he and his wife were contesting the election against the congress. The witness said that Dr Keskar requested him not to oppose him in the parliamentary constituency. This witness appears to be hostile and the story set up by him seems to us to be improbable. It is hardly likely that Dr Keskar would try to convince such a hostile person to refrain from carrying on propaganda against him.

Dr Keskar in his evidence has said that Sri Ghor Pade did not accompany him during his election tour. When he was touring Sri Ghor Pade used to stay behind in the dak bungalow. He admitted that Sri Ghor Pade was in Sultanpur for about a fortnight before the polling. Dr Keskar said that the workers generally did not come to him at Sultanpur Dak Bungalow but the prominent men came to him sometimes. Dr Keskar said that he did not receive any message or communication at the Dak Bungalow relating to his election. All these messages would go to the Congress election office. He denied having issued any instructions to his workers from the Dak Bungalow. He said that he visited the District Election Office several times to make enquiries about rules and regulations. He said that Sri Ghor Pade did not go to the Congress election office frequently. He did go to the District Congress Election Office sometimes and according to Dr Keskar these visits were mainly to search for him at the office and not for any purpose of his election. Apart from Dr Keskar's denial that Sri Ghor Pade was used by him for election purpose we have also the evidence of R.W. 11 Ram Jiawan, R.W. 12 Gur Prasad and R.W. 1 Deokali Din Sharma. Their evidence supports the denial by Dr Keskar.

In regard to Dr Keskar's evidence some comment was made that Dr Keskar had invented a story when he said that he had stopped at a nearby petrol pump and Sri Ghor Pade had just gone in to get the polling station list. We do not think that story is necessarily false. In any case it would not make much difference whether Sri Ghor Pade went to take the list from the Dak Bungalow itself or from near the petrol pump.

We think that the one point that has been established under this issue is that Sri Ghor Pade did bring a list of polling stations for Dr Keskar. It was not contested before us that Sri Ghor Pade was a Government servant of gazetted rank. The question therefore is whether this use of Sri Ghor Pade for bringing a list of polling stations constitutes a corrupt practice or not? The representation of the People's Act 1951 by section 123(7) makes it a corrupt practice to obtain, procure or attempt to obtain or procure by a candidate or his agent or by any other person any assistance other than the giving of vote for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the several enumerated classes which includes gazetted officers. Explanation (2) to the sub-section makes it clear that a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent, or a polling agent or counting agent of that candidate. According to Explanation (1) of section 123 of the Act the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate. It would therefore appear that the gazetted officers are now barred from acting as election agents or polling agents or counting and if they do so it will be deemed that they are acting in furtherance of the prospects of a candidate.

It will be observed that what section 123(7) of the Act penalises is the taking of assistance for the furtherance of the prospects of the candidate's election. The words "for the furtherance of the prospects of that candidate's election" seem to suggest that any assistance which improves the chances of the candidate being elected cannot be rendered by the enumerated class of government servants which class includes gazetted officers. One has therefore to see whether it made any difference so far as the prospects of Dr. Keskar's election were concerned that Sri Ghor Pade went to get the list of polling stations. Could his status as a Government Servant make any difference to the election so far as the obtaining of the list by Ghor Pade was concerned? The list equally could have been handed over to any person authorised by Dr. Keskar. The fact that a Government servant had gone to get the list would not facilitate the obtaining of the list at all nor could it have any effect on the election one way or the other. The list of polling stations is obtained from the election office. The utilisation of the services of Sri Ghor Pade for the purpose of obtaining the list would not possibly convey any impression of official support for Dr. Keskar. Merely asking for the list from the office cannot convey to anybody present in the office the impression that since the polling list had been sent for by Dr. Keskar through Sri Ghor Pade a government servant, therefore those who saw the list being handed over to Sri Ghor Pade including the officer who handed over the list were required to vote for Dr. Keskar. The action of obtaining a list from inside an office is of such a trivial character that although it is connected with the election it can hardly be said that the employment of the government servant for the purpose of obtaining the list would further improve the chances of Dr. Keskar's election.

We will now refer to some cases to which our attention was drawn. In *Raj Krushna Bose v. Binod Kanungo and others* (A.I.R. 1954, S.C. 202) it was indicated in a case under the Representation of People Act as it then stood that the policy behind section 123 of the Act was to keep government servant aloof from politics and also to protect them from being imposed on by those who are in possession of influence or authority and to prevent the machinery of government being used in furtherance of a candidate's return. In that case the nomination was proposed and seconded by a government servant. It was held that it was not the policy of the law to disenfranchise them or to denude them altogether of their rights as ordinary citizen of the land, but, it was said that if the procurement of Government servants to propose and second the nomination is for the furtherance of the candidate's prospect in other ways than by vote, then section 123(8) of the Act is attracted for in that case the plan and its fulfilment must be viewed as a connected whole and the acts of proposing or seconding which are innocent in themselves cannot be separated from the rest. As the evidence was tendered in this case it was obvious that it was desired to be established that the service of Sri Ghor Pade had been taken as part of a plan made to further the prospects of the election and that it was in furtherance of this plan that the services of Sri Ghor Pade were constantly utilised including the sending of Sri Ghor Pade to get the list of polling stations. We have disbelieved the evidence so far as it related to Ghor Pade being used for the purpose of election generally by Dr. Keskar and the only part of this evidence which we have believed is that Sri Ghor Pade went to get the polling list. There is of course a difference between the employment of a government servant for the purpose of getting a polling list and nomination by a government servant because in the latter case a question of disenfranchisement arises, but nonetheless it seems to us that the assistance rendered by a government servant must be of such a character as can reasonably be said to improve and further the prospects of the candidate's election and a mere trivial act of an officer, which is casually undersigned which has no such consequence would not amount to a corrupt practice.

Another case which was cited before us is *Satya Dev Bushahri v. Padam Dev and others* (A.I.R. 1954, S.C. 587). In that case it was held with reference to the Representation of the People Act (43 of 1951—as it then stood) that there was nothing in the Act or the Rules barring the appointment of a government servant as a polling agent. It was said that such an appointment does not *per se* contravene section 123(8) of the Act. It was further indicated that there was nothing in the nature of the duty of a polling agent which necessarily brings him within the prohibition enacted in that section. The duty of a polling agent is merely to identify the voter and that could not by itself and without more be said to further the election prospects of the candidate. So long as the polling agent confines himself to his work as such agent of merely identifying the voters it cannot be said that section 123(8) has in any manner been infringed, but it was added that if it is established that the presence of a Government servant of rank and importance as polling agent of one of the candidates has

proved to be a source of unfair election practices and if it is made out that the candidate or his agent had abused the right to appoint a Government servant as polling agent by exploiting the situation for furthering his election prospects, then the matter can be dealt with as an infringement of section 123(8) of the Act. By the existing Explanation of section 123(7) of the Representation of the People Act as it now stands, it is now deemed that the furtherance of the election prospects of a candidate is involved if a government servant acts as an election agent or polling or counting agent. But what has been ruled in *Satya Dev's* case shows that the assistance taken from a government servant must be of such a character as can be said to further the prospects of an election and the use of a government servant for such an insignificant purpose as getting a polling list in the absence of any plan to utilise the services of a government servant for the purpose of furthering the prospects of the election should not be held in our view to constitute an infringement of the prohibition laid down in section 123(7) of the Representation of the People Act as it now stands.

In *Dr. Y. S. Parmar v. Sh. Hira Singh Pal and another* (A.I.R. 1959 S. C. 244) it was said that all that section 123 sub-section (7) of the Act requires is that assistance should be procured for furthering the election. Where the explanation (being the explanation already referred to hereinbefore) applies because a candidate has appointed a Government servant to act as his polling agent and he accordingly does so act, a statutory presumption arises that the candidate thereby procured that person's assistance in furtherance of the prospects of his election, and this irrespective of whether he intended to procure such assistance or not. Therefore in the case of the appointment of a polling agent which comes within the explanation the intention of the candidate in procuring the assistance is irrelevant. Similarly the knowledge of the candidate whether the person, whose service as his polling agent he has procured, is a member of the armed forces or any of the other specified class of Government servants or not is equally irrelevant. Further it was held that in view of the amendment of the section in 1956, which has done away with the distinction between illegal and corrupt practices, no question of *mens rea* or intention or knowledge of the candidate arises in such cases. It may be that Dr. Keskar could not now say that he did not intend to further the prospects of his election by employing Sri Ghor Pade, but as we have said already the employment of Sri Ghor Pade could not possibly in any way further the prospects of Dr. Keskar's election so no question of whether he intended it or not did not arise.

We will now refer to *Mohd. Ibrahim v. Election Tribunal, Lucknow and others* (A.I.R. 1957 All. 292). It was pointed out by Mootham, Chief Justice, with reference to section 123(8) of the Representation of the People Act that it is not every act which is done by Government servant at the instance of candidate or the agent which comes within the ambit of this clause even though it may result in the further of the former's election for, were that so, a candidate would be unable to utilise the services of the post office to deliver copies of his election address or the railway service to travel to a place where he wants to make an election speech. What is being struck, according to Chief Justice Mootham, by this clause is the furtherance of a candidate's election by obtaining or procuring the assistance of a Government servant because the latter is a Government servant. The mere rendering of assistance to a candidate at the latter's request by a government servant, even though that assistance furthers the election prospects of that candidate does not necessarily fall within the mischief which this clause is designed to prevent. Upon this view the gist of the matter would seem to be were the services of Sri Ghor Pade utilised by Dr. Keskar because Sri Ghor Pade was a Government servant, the fact of his being a government servant being the operative reason for employing him for getting the polling list. We have no doubt whatsoever that in this case Sri Ghor Pade's services were utilised much as the services of any other private person would have been utilised. Sri Ghor Pade's status as a Government servant played no part when Dr. Keskar sent him to getting the list of polling stations. Of course if the rest of the story as tried to be established in the case had been established that Sri Ghor Pade was being used continuously in connection with the election then it would be probable that he was sent to the office to get the polling stations list because he was a government servant. We are therefore of the view that merely by virtue of the fact that Sri Ghor Pade was used to get this polling list Dr. Keskar cannot be said to have committed a corrupt practice.

We would like to state that much comment was made during the hearing by counsel for Dr. Keskar in regard to defect in pleadings and it was said that Dr. Keskar was much prejudiced particularly due to lack of particularisation. In view of the fact that our findings are in favour of Dr. Keskar it is not necessary to go into this question but we have stated this in order that it may be on record that objection was taken to the pleadings practically in respect of all the issues with which we have dealt with hereinbefore. Some suggestion

was made on behalf of the petitioner that it was respondent's duty to produce evidence in rebuttal to the extent that it was necessary. Some evidence in rebuttal had also been produced but we think that the petitioner's case fails because the evidence that has been tendered on his behalf is, in our opinion, neither satisfactory nor sufficient to bring home the charges. On behalf of the petitioner in this connection our attention was invited to the case of *Bhagwan Datt Shastri v. Ram Ratan Gupta and others* (Election Law Reports, Vol II, 1955-56, page 448). We consider that the onus to establish the charges clearly rested upon the petitioner (See *S. Khader Sheriff v. Munnuswami* A.I.R. 1955, S.C. p. 775) and that onus in our view has not been discharged.

Inasmuch as the Election Tribunal has written a very full judgment and has given ample reasons for not relying upon the testimony of the witnesses and as we are in almost complete agreement with the finding of the Election Tribunal save with regard to one or two matters we have not thought it necessary to repeat the criticism of the evidence, the idea being to keep this judgment within limits, even so we have dealt with the evidence in details to the extent that we thought it necessary. We have already noted that the findings on the rest of the issues were accepted by the petitioner, therefore we have not discussed those issues at all.

The result is that this appeal fails, and it is dismissed. The petitioner will pay the costs of respondent which we assess at Rs. five hundred.

We are indebted to learned counsel for the appellant for his lucid and discriminating prosecution of the case and to counsel for the respondent for his assistance.

(Sd) R.N.G

The 21st August, 1959.

(Sd.) S.N.

[No. 82/451/57]

By Order,

C. B. LAL, Under Secy

MINISTRY OF FINANCE

(Department of Expenditure)

New Delhi-2, the 27th October 1959

S.O. 2437.—In pursuance of clause (3) of article 77 of the Constitution and of all other powers enabling him in this behalf, the President is pleased to make the following amendment in the Delegation of Financial Powers Rules, 1958, namely:—

Amendment No. 18

“Delete the words ‘Partition Secretariat’ wherever they occur”

(This takes effect from 1st March, 1959).

[No. F. 12(138)-E II.(A)/59]

R. R. SAVOOR, Dy. Secy.

(Department of Economic Affairs)

New Delhi, the 27th October 1959

S. O. 2438—Statement of the Affairs of the Reserve Bank of India, as on the 23rd October 1959.

BANKING DEPARTMENT

Liabilities	Rs.	Assets	Rs.
Capital paid up	5,00,00,000	Notes	30,65,19,000
Reserve Fund	80,00,00,000	Rupee Cash	1,72,000
National Agricultural Credit (Long-term Operations) Fund	30,00,00,000	Subsidiary Coin	8,65,000
National Agricultural Credit (Stabilisation) Fund	4,00,00,000	Bills Purchased and Discounted :—	
Deposits :—		(a) Internal	..
(a) Government		(b) External	..
(i) Central Government	67,39,35,000	(c) Government Treasury Bills	30,37,39,000
(ii) Other Governments	18,18,63,000	Balances held abroad*	24,85,71,000
(b) Banks	80,90,95,000	Loans and Advances to Governments	18,55,31,000
(c) Others	11,23,52,000	Other Loans and Advances†	80,62,06,000
Bills Payable	18,71,58,000	Investments	246,52,97,000
Other Liabilities	19,27,88,000	Other Assets	10,02,91,000
TOTAL	441,71,91,000	TOTAL	441,71,91,000

*Includes Cash & Short term Securities.

†No advance granted usance bills under Section 17(4)(c) to the Reserve Bank of India Act are outstanding.

Dated the 27th day of October, 1959.

in Account pursuant to the Reserve Bank of India Act, 1934 for the week ended the 23rd day of October 1959.

ISSUE DEPARTMENT

Liabilities	Rs.	Rs.	Assets	Rs.	Rs.
Notes held in the Banking Department . . .	30,65,19,000		A. Gold Coin and Bullion :—		
Notes in circulation . . .	1068,23,86,000		(a) Held in India . . .	117,76,03,000	
Total Notes issued		1698,89,05,000	(b) Held outside India	
			Foreign Securities . . .	163,00,89,000	
			TOTAL OF A. . .	280,76,92,000	
			B. Rupee Coin . . .	136,53,01,000	
			Government of India Rupee Securities . . .	1281,59,12,000	
			Internal Bills of Exchange and other commercial paper	
TOTAL—LIABILITIES	1698,89,05,000		TOTAL—ASSETS		1698,89,05,000

Dated the 27th day of October, 1959.

H. V. R. IENGAR,
Governor.

[No. F. 3(2)-BC/59.]

A. BAKSI, Jt. Secy.

(Department of Economic Affairs)

New Delhi, the 29th October 1959

S.O. 2439.—In exercise of the powers conferred by sub-section (3) of Section 1 of the State Financial Corporations Act, 1951 (LXII of 1951), the Central Government hereby appoints the 7th day of November, 1959, as the date on which the said Act shall come into force in the State of Jammu & Kashmir to which the said Act extends.

[No. F. 6(36)-Corp/59.]

M. K. VENKATACHALAM, Dy. Secy.

CENTRAL BOARD OF REVENUE

INCOME-TAX

New Delhi, the 27th October 1959

S.O. 2440.—In exercise of the powers conferred by sub-section (4) of Section 5 of the Indian Income-tax Act, 1922 (11 of 1922), the Central Board of Revenue hereby makes the following further amendments to its notification S.O. 660 No. 35-Income-tax, dated the 22nd April, 1958, namely:—

In the Schedule appended to the said notification under the Sub-head "IX-Madhya Pradesh and the Districts of Nagpur and Bhandara" against "Nagpur" the existing entry "12-H-Ward, Nagpur" shall be deleted.

Explanatory Note

Note.—The amendment has become necessary on account of the abolition of "H-Ward, Nagpur".

(The above note does not form a part of the notification but is intended to be merely clarificatory).

[No. 114 (F. No. 50/27/59-IT).]

D. V. JUNNARKAR, Under Secy.

OFFICE OF THE ASSISTANT COLLECTOR OF CENTRAL EXCISE AND LAND CUSTOMS, GOA FRONTIER DIVISION, BELGAUM

NOTICE

Belgaum, the 24th October 1959

S.O. 2441.—Whereas it appears that the marginally noted goods which were seized by the Jamadar C. Ex., Ch. No. 67 at a place known as "Vara dekaracha Tita" in Chorla Range, (Dodamarg Circle) in the vicinity of the Indo-Goa border on 10th June, 1959, were imported by land from Goa (Portuguese possession in India) in contravention of Section 5(1) of the Land Customs Act 1924 and the Government of India, Ministry of Commerce and Industry, Import Control Order No. 17/55, dated 7th December, 1955, issued under Section 3 of the Imports and Exports Control Act 1947 and further deemed to have been issued under Section 19 of the Sea Customs Act 1878.

Now, therefore, any person claiming the goods is hereby called upon to show cause to the Assistant Collector of Central Excise and Land Custom, Goa Frontier Division, Belgaum why above-mentioned goods should not be confiscated under Section 5(3) of the Land Customs Act 1924 read with Section 167(8) of the Sea Customs Act 1878 and the containers under Section 168 of the Sea Customs Act 1878 and why a penalty should not be imposed on him under Section 7(1)(c) of the Land Customs Act 1924 read with Section 167(8) of the Sea Customs Act 1878.

If such a owner fails to turn up to claim the above mentioned unclaimed goods or to show cause against the action proposed to be taken within 30 days from the date of the publication of this notice in the Government of India Gazette, the goods in question will be treated as unclaimed and the case will be decided accordingly.

[No. VIII(b)10-408/59.]

SHOW CAUSE NOTICES

Belgaum, the 28th October 1959

To

Shri Govind Mahadeo Dicholkar of Thivi,
P.O. Mapuca, GOA.

SUB:—Seizure of Wrist watches and other articles on 4th January 1959

S.O. 2442.—Whereas there is reason to believe that the goods mentioned in the subjoined Schedule were imported into India from Goa by a route other than one prescribed under Section 4(b) of the Land Customs Act 1924, without a permit as required under Section 5(1) of the Land Customs Act 1924.

And whereas there is reason to believe that the goods mentioned in the Schedule were imported from Goa into the Indian Union in contravention of the Government of India, Ministry of Commerce and Industry, Import (Control) Order No. 17/55, dated 7th December 1955 as subsequently amended issued under Sections 3(a) and 4-A of the Import and Export Control Act 1947, and further deemed to have been issued under Section 19 of the Sea Customs Act 1878.

And whereas it appears that the acts of Shri Govind Mahadeo Dicholkar as a person concerned in the offence attract the operation of Section 7(1)(b) of the Land Customs Act 1924 and Section 167(8) of the Sea Customs Act 1878 and read with Section 3(2) of the Import and Export Control Act 1947.

Now, therefore, Shri G. M. Dicholkar is hereby called upon to show cause to the undersigned why a penalty should not be imposed on him under the above Sections and why the goods mentioned in the Schedule should not be confiscated under Section 5(3) of the Land Customs Act 1924, and Section 167(8) of the Sea Customs Act 1878, read with Section 3(2) of the Imports and Exports Control Act 1947, as made applicable to the Land Customs Act 1924.

The basis for the liability for the goods to confiscation and his liability to penalty are set out in the annexure to the Show Cause Notice.

Shri G. M. Dicholkar is hereby directed to produce at the time of the showing cause all the evidence or documents upon which he intends to rely in support of his defence. He is further directed to inform whether he desires to be heard in person by the undersigned in the case.

Shri G. M. Dicholkar should submit his reply to this show cause notice together with all documents and evidence, if any, within one month from the date of publication of this Notice failing which the case will be decided ex-parte on merit.

SCHEDULE

S. No.	Description	Quantity
1.	Wrist Watches	14
2.	Dried beans and Sweet Potatoes	1½ Srs.
3.	White cloth pieces with design	3
4.	One gunny hand-bag and one cloth Hand-bag (Blue coloured)	2
5.	Pearl like beads	2

ANNEXURE TO THE S.C. MEMO

On 3rd January 1959, on receipt of information, the Inspector of C.E. and L. Customs, Sasoli arranged a sitting up party with the help of Inspector, C.E.F.S Netarda and Sub-Inspector of Hedus and Fakirpat covering the vulnerable points in the jurisdiction of Chowkey No. 38, at 10.00 Hrs. on 4th January 1959 the party sighted a person crossing over the border and making his way towards Indian territory with head loads and intercepted him with his belongings. The search of the belonging of the person in the presence of the pancha witnesses revealed that he was attempting to smuggle the goods as shown in the Show Cause Notice. The goods were then seized under a panchanama, as there was sufficient reason to believe that they were smuggled from Goa into India in contravention of the existing laws.

The statement of the person who gave out his name as Shri Govind Mahadeo Dicholkar of Thivi P.O. Mapuca Goa was recorded by the Inspector of C.E. Sasoli on 4th January 1959. Shri Dicholkar has pleaded that the goods belonged to one

Prabhakar Salkar of Mapuca Goa and that he was carrying the goods as per his (Salkar's) instructions to Bombay. He did not know to whom the goods were to be sold at Bombay. He admitted the offence and begged to be excused.

In view of the fact that the import of the goods under Seizure from Goa into India without permit is restricted, the party's own admission regarding the illicit import of the goods under seizure there is reason to believe that the goods were smuggled from Goa into India in contravention of the provisions as indicated in the accompanying Show Cause Memo.

The goods are therefore liable to be confiscated and Shri G. M. Dicholkar as a person concerned in the offence is liable to be penalised under the provisions stated in the Show Cause Memo.

[No. VIII(b)10-135/59/22428.]

To

Shri Bhagadu Kato Gaonkar of Satoli
Goa.

SUB:—Seizure of gold bullion weighing T1.16, As.O, Gs. 1 on 23rd January, 1959

S.O. 2443.—Whereas there is reason to believe that the gold bar mentioned in the subjoined Schedule was imported into India from Goa by a route other than the prescribed under Section 4(b) of the Land Customs Act 1924 without a permit as required under Section 5(1) of the Land Customs Act 1924.

And whereas there is reason to believe that the gold bar mentioned in the Schedule was imported from Goa into Indian Union in contravention of Government of India, Ministry of Finance Notification No. 12(11)F.I./48 of 25th August 1958 and No. 12(11)F.I./51 of 27th February 1951 as amended by Notification No. 2(36)E.F.VII/53 of 5th February 1955.

And whereas it appears that the acts of Shri B. K. Gaonkar as a person concerned in the offence attract the operation of Section 7(1)(b) of the Land Customs Act 1924 and Section 167(8) of the Sea Customs Act 1878 read with Section 23-A of the Foreign Exchange Regulation Act 1947.

Now, therefore, Shri B. K. Gaonkar is hereby called upon to Show Cause to the undersigned why a penalty should not be imposed on him under the above Sections and why the gold mentioned in the Schedule should not be confiscated under Section 5(3) of the Land Customs Act 1924 and Section 167(8) of the Sea Customs Act 1878 read with Section 23-A of the F.E.R. Act 1947 as made applicable to the Land Customs Act 1924.

The basis for the liability for the gold to confiscation and his liability to penalty are set out in the annexure to the Show Cause Notice.

Shri B. K. Gaonkar is hereby directed to produce at the time of the showing cause all the evidence or documents upon which he intends to rely in support of his defence. He is further directed to inform whether he desires to be heard in person by the undersigned in the case.

Shri B. K. Gaonkar should submit his reply to this show cause notice together with all documents and evidence, if any, within one month from the date of publication of this notice failing which the case will be decided ex parte on merit.

SCHEDULE

S. No.	Description	Quantity
1.	Gold bar bearing Mark "KING FOOK 99% Pure".	16 Tl. 1 Gs.

ANNEXURE TO THE S. C. MEMO

On 23rd January, 1959, the Inspector of C.E. Bargi received information that some contraband preferably gold would be smuggled from Goa into India by an unusual jungle route through "Danda" political border. The Inspector then arranged a strict vigilance on that route with the assistance of his staff, from 8-00 Hrs on 23rd January, 1959. During the course of the watch the party noticed some two persons followed by other 4/5 persons coming towards the spot by the same route, blocked by the party. The Customs party immediately challenged the persons and apprehended two persons while others made good their escape. Pancha witnesses were called and the person of the suspect who gave out his

same as Bhagado Kata Gaonkar of Satoli Goa, was searched in their presence which resulted in recovery of the gold as shown in the Schedule to the Show Cause Notice. Then the gold bullion was seized under a panchanama as there was sufficient reason to believe that the gold was smuggled from Goa against the existing laws.

During the course of the investigations the statement of Shri B. K. Gaonkar was recorded by the Inspector of C.E. Bardi on 23rd January 1959. Shri B. K. Gaonkar has deposed that he came to see one Sahukar of Bahira village who was said to come from Goa, but did not. The gold was to be delivered to the same Sahukar but he did not know the exact name and address of the same person. However, he admitted the offence.

Import of the gold bullion into India from Goa is restricted. The party has clearly admitted that he brought the gold from Goa by an unauthorised route. From these facts there is sufficient reason to believe that the gold bullion was smuggled from Goa into India, in contravention of the provisions of the Notifications and Orders as stated in the Show Cause Memo.

The gold bullion under seizure is therefore, liable to confiscation and Shri B. K. Gaonkar as a person concerned in the offence is liable to penalty under the provisions as indicated in the accompanying Show Cause Notice.

[No. VIII(b)10-122/59.]

SUB:—Seizure of Indian Currency at Majali on 25th March 1959

S.O. 2444.—Whereas there is reason to believe that the goods and Currency mentioned in the subjoined Schedule were about to be exported to Goa from India by a route other than the one prescribed under Section 4(b) of the Land Customs Act 1924 without a permit as required under Section 5(1) of the Land Customs Act 1924.

And whereas there is reason to believe that the goods mentioned in the Schedule were about to be exported to Goa from the Indian Union in contravention of:—

(1) The Government of India, Ministry of Commerce and Industry, Export Control Order No. 1/54, dated 10th May 1954 export Control Order No. 1/58 of 1st May 1948 issued under Section 3(2) of the Imports and Exports Control Act 1947 and further deemed to have been issued under Section 19 of the Sea Customs Act 1878.

(2) Reserve Bank of India Notification No. F.E.R.A. 105/51 R.B. dated 27th February 1951 as amended by Notification No. F.E.R.A. 128/54, dated 11th September 1954, 140/55, dated 10th November 1955, 147/57 R.B., dated 19th March 1957, F.E.R.A. 157/57 R.B., dated 5th August 1957 and F.E.R.A. 162/58 R.B., dated 29th April 1958 and Notification No F.E.R.A. 167/58 R.B., dated 17th October 1958 issued under Section 8(2) of the Foreign Exchange Regulation Act 1947 and further deemed to have been issued under Section 19 of the Sea Customs Act 1878.

And whereas it appears that the acts of Shri P. J. Pareira as a person concerned in the above offences attract the operation of Section 7(1)(b) of the Land Customs Act 1924 read with Section 167(8) of the Sea Customs Act 1878.

Now therefore, Shri P. J. Pareira is hereby called upon to show cause to the undersigned why a penalty should not be imposed on him under the above Sections and why the goods and the currency mentioned in the Schedule should not be confiscated under Section 5(3) of the Land Customs Act 1924 read with Section 167(8) of the Sea Customs Act 1878 as made applicable to the Land Customs Act 1924.

The basis for the liability for the goods and the currency to confiscation and his liability to penalty are set out in the annexure to the Show Cause Notice.

Shri P. J. Pareira is hereby directed to produce at the time of the showing cause all the evidence or documents upon which he intends to rely in support of his defence. He is further directed to inform whether he desires to be heard in person by the undersigned in the case.

Shri P. J. Pareira should submit his reply to this Show Cause Notice together with all documents and evidence, if any, within one month from the date of publication of this Notice failing which the case will be decided ex parte on merit.

S C H E D U L E

S. No.	Description	Quantity
1.	Blue hand-bag	One
2.	Tea Powder	2½ Lbs.
3.	Nylon Sari 5 Yrds. blue printed	One
4.	" " " Pink	One
5.	" " " Blue & Green flowers.	One
6.	" " " Yellow	One
7.	Neck-tie Red	One
8.	White bodies ladies	Two
9.	Coating cloth Black	2½ Yrds.
10.	" " " with blue and white spots.	2½ Yrds.
11.	Gangavan	One
12.	Ladies chappals pair	One
13.	Chit cloth printed with white and green	6 Yrds.
14.	Chit cloth printed	1 Yrd.
15.	Chit cloth printed Pink & Yellow	1 Yrd.
16.	Pink printed Sari 5 Yrds.	One
17.	" SERFINE " Medicine bottle	One
18.	Pandit " RANJAN " Ointment small tin	One
19.	Indian Currency	Rs. 2100/-
20.	Leather bag	One
21.	2 Note books and 7 Receipts	
22.	Plastic Money purse	One

ANNEXURE TO THE SHOW CAUSE NOTICE

On 25th March 1959, P.S.I. CID, Majali check post while returning from Sadashivgad by the last bus noticed movements of three persons travelling in the same Bus were suspicious. He therefore challenged them as soon as they got down at Majali. On tactful interrogation, it was revealed that all the three were Goans and had entered India by a route other than a prescribed one; before three weeks and that they had now come to Majali with an intention of going to Goa by Sea route. He therefore called the panchas and seized the goods found with them on a reasonable belief that the same were about to be exported to Goa unauthorisedly.

In his statement dated 27th March 1959, Shri Peter Joaquin Parcira deposed that he came from Goa by Sea on 4th or 5th March. He had brought press buttons, Mechanical lighters and some Scents bottles all valued about Rs. 960. He sold the goods to a muslim at the Crawford Market, Bombay. He received Rs. 2,370 for all the goods. He then came to Karwar Via Hubli with an intention to go to Goa by an unauthorised route. He admitted the offence and begged to be excused.

The Indian Currency and the goods were being exported to Goa by an unauthorised route. Shri P. J. Pareira has admitted the offence, the goods and the Indian Currency therefore appear liable to confiscation under the provisions of Sections as stated in the Show Cause Memo.

Shri P. J. Pareira as a person concerned appears liable to a personal penalty under the provisions of Sections as set out in the Show Cause Notice.

[No. VIII(b)10-218/59/2243.]

E. R. SRIKANTIA, Asstt. Colr.

MINISTRY OF COMMERCE AND INDUSTRY

(Indian Standards Institution)

New Delhi, the 29th October 1959

S.O. 2445.—In pursuance of sub-regulation (1) of regulation 8 of the Indian Standards Institution (Certification Marks) Regulations, 1955, the Indian Standards Institution hereby notifies that one licence, particulars of which are given in the Schedule hereto annexed has been renewed.

THE SCHEDULE

Sl. No.	Licence No. and Date	Period of Validity		Name and Address of the Licens- see	Article covered by the licence	Relevant Indian Standard
		From	To			
1	CML-103 7-10-1958.	1-11-1959	30-10-1960	The Standard Batteries Ltd., Vakola, Santa Cruz, Bombay— 25.	Lead-Acid Storage Batteries for Motor Vehicles, Light Duty.	IS : 395-1952 Specification for Lead-Acid Storage Batteries for Motor Vehicles, Light Duty.

[No. MDC/12(19).]

S.O. 2446.—In pursuance of sub-regulation (1) of regulation 8 of the Indian Standards Institution (Certification Marks) Regulations, 1955, the Indian Standards Institution hereby notifies that five licences, particulars of which are given in the Schedule hereto annexed, have been granted authorizing the licensees to use the Standard Mark.

THE SCHEDULE

Sl. No.	License No. and Date	Period of Validity		Name and Address of the Licens- see	Article/Process covered by the Licence	Relevant Indian Standard
		From	To			
1	CM/L-150 15-10-1959.	1-III-1959	31-10-1960	The Packing Materials Corporation, 248 Samuel Street, Bombay—3.	Waterproof Packing Paper	IS:293-1951 Code for Seaworthy Packaging of Cotton Textiles.
2	CM/L-151 15-10-1959.	1-III-1959	31-10-1960	M/s. Synthetic Chemical Industries, Ravi Industries Compound, Agra Road, Thana,	Sodium Acetate, Technical and Photographic.	IS:557-1954 Specification for Sodium Acetate, Technical and Photographic.
3	CM/L-152 15-10-1959.	1-III-1959	31-10-1959	The Alkali & Chemical Corporation of India Ltd., 34 Chowinghee, Calcutta—16.	BHC Dusting Powders	IS:561-1958 Specification for BHC Dusting Powders (Revised).
4	CM L-153 15-10-1959.	1-III-1959	31-10-1960	Do.	BHC, Technical	IS:560-1955 Specification for BHC, Technical
5	CM L-154 15-10-1959.	1-III-1959	31-10-1960	M/s. Mysore Commercial Union Ltd., Yeswantpur, Bangalore.	Tea-Chest Plywood Panels	IS:10-1953 Specification for Plywood Tea-Chests (Revised).

[No. MDC 12(224.1)

New Delhi, the 30th October 1959

S.O. 2447.—In pursuance of sub-clause (2) of Rule 4 of the Indian Standards Institution (Certification Marks) Rules, 1955, the Indian Standards Institution hereby notifies that the Standard mark, details of which are given in the Schedule hereto annexed has been rescinded with immediate effect.

THE SCHEDULE

Sl. No.	Design of the Standard Mark rescinded	Related Indian Standard	No. and Date of the Gazette Notification in which specifying of the Standard Mark was notified
1	 IS:227	IS:227-1954 Specification for Malleable Iron Castings.	S.O. No. 1289 dated 5 July 1958.

*Relevant IS Grade Designation.

[No. MDC/11(5).]

S.O. 2448.—In pursuance of sub-regulation (3) of regulation 7 of the Indian Standards Institution (Certification Marks) Regulations, 1955, the Indian Standards Institution hereby notifies that the rate of marking fee for malleable iron castings for cycle bottom shells and motor-truck chassis parts conforming to IS:227-1954 Specification for malleable Iron Casting, details of which were published in the Gazette of India dated 5 July 1958 as S.O. 1290, has been withdrawn with immediate effect.

[No. MDC/11(6).]

C. N. MODAWAL,
Deputy Director (Marks)

MINISTRY OF STEEL, MINES & FUEL

(Department of Iron and Steel)

New Delhi, the 30th October 1959

S.O. 2449/ESS.COMM/IRON AND STEEL-15(1) & 27(1)/AM(8).—The following Notification issued by the Iron and Steel Controller under Sub-clause I of Clause 15 of the Iron & Steel (control) Order, 1956 is published for general information.

NOTIFICATION

In exercise of the powers conferred by Sub-Clause I of Clause 15 of the Iron and Steel (Control) Order, 1956 and with the approval of the Union Government the Iron and Steel Controller hereby notifies the following amendments to Schedule I and Appendix I of the consolidated Price Notification published under No. 2249-ESS.COMM/IRON AND STEEL 15(1) and 27(1) in Part II—Section 3(ii) of the Gazette of India dated 1st November, 1958.

Amendment to Schedule No. I

For Place extras indicated under Part II B(a) of conditions for sale.

Read the following.

	Place extra per L/ Ton for tinplates	Place extra for M/ ton for tinplate
Ambala Cantt.	Rs. nP. 199.45	Rs. nP. 97.88
Bombay	111.78	110.01
Calcutta	27.95	27.51
Delhi	94.12	92.63
Kanpur	70.00	68.89
Madras	110.10	108.36

Amendment to Appendix I

Sub-item No. I-3 (IV)—High Carbon sheets. Rate per ton

	L/T	M/T
·40% to under ·50% carbon	For Rs. 35.00	34.45
Read Rs. 90.00		88.50
Delete Sub items :	·50% to under ·60% carbon.	
	·60% to under ·70% carbon.	
	·70% to under ·80% carbon.	

Addendum to Appendix I

	Rate per ton L/Ton	M/Ton
A. Base Price item No. I Bars.		
Sub item No. I(VII) Hexagon Bars to IRSSM4 --		
Class III (B.O.H.) quality	Rs. nP. 12.37	Rs. nP. 12.17
(VIII) Hexagon Bars to IRSSM4 --Class IV (B.O.H.)	41.25	40.60
(IX) Hexagon Bars to IRSSN-6 --class V (B.O.H.)	6.87	6.76
	Rate per ton L/T	M/T
Sub Item No. I (VIII) —	Rs. nP.	Rs. nP.
(a) Ribbed steel Bars	25.00	24.60
(b) Twisted steel bars	96.00	94.43
B. Base price item No. 2-Bars other sizes.		
Sub-item No. 3(iii) Flats 6" and up wide in specific length	39.00	38.38
C. Base price item No. 3—Structurals.		
Sub item No. 2 channels 5" x 2"	11.25	11.07
D. Base price item No. 4 Plates 3/8" and up.		
Sub item No. 6 weldable Plates to I.S.I. Spec- ification No. 226—ASW	35.00	34.45

H. Base price item No. 8—Boiler Plates 3/8"	Rs. nP.	Rs. nP.
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and up.		
Sub item No. 5 Weldable Plates to I.S.I. Specification No. 226-ASW	35 00	34.45
Sub item No. I-4(1) 12' x 3' x 13G	3.75	3.69
Sub item No. I-4 (vii)—		

For Panel sheets. Read Black sheets including Panel Sheets.

Under Sub item No. I-5 (ii) -

For Inspection of Panel Plates Read Item No. I-5 (iv) Inspection of Panel Plates.

Sub item No. I-5 (iii) Packing sheets in 2 tons

Steel Envelopes	Rs. nP.	Rs. nP.
Do in 3 tons Do.	12.25	12.05
Do. in 4 tons Do.	10.75	10.62
Do.	9.50	9.35

K. Base price item No. 11—Heavy Rails.

Sub item No. 9—150 lbs. Crane Rails	185.00	182.08
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T. Miscellaneous No. 14(m)(iv) Weldable Bars & Structural I.S.I. Specification No. 226-ASW

Sub item No. 14(t)(i) Inspection fee	30.00	29.53
(ii) Laying out charges for surface Inspection except in the case of tested Rails, Galvanized sheets and Panel Plates	2.50	2.46

Corrigendum to Appendix I

I. Base price item No. 9—Black sheets (gauges 10 to 14).

Sub item No. I-3(iii) *For Black sheet to specification B. S./STAS/V2c & V3*
Read Black sheet to specification BS/STAS/V2c & V3 for tensile strength 27 to 32 tons.

Sub item No. I-4(1).

<i>For 7'-4" x 1'-10" x 22/23G</i>	<i>Read 7'-4" x 1'-10" x 22G</i>
<i>For 6' x 1'-7" x 22G</i>	<i>Read 6'-4" x 1'-7" x 22G</i>
<i>For 10'-3" x 4'-3" x 16G</i>	<i>Read 10' x 4'-3" x 16G</i>
<i>For 11'-1 1/4" x 2'-4 1/4" x 16G</i>	<i>Read 11'-4 1/4" x 2'-4 1/2" x 16G</i>

*A. S. BAM,
Iron & Steel Controller."*

[No. SC(A)-2(274) 58/C.]

New Delhi, the 3rd November 1959

S.O. 2450/ESS, COMM/Iron and Steel-15(1) and 27(1)/AM 7.—The following notification issued by the Iron and Steel Controller under sub-clause (1) of Clause 15(1) of the Iron and Steel (Control) Order, 1956, is hereby published for general information.

NOTIFICATION

In exercise of the powers conferred by sub-clause (1) of clause 15 of the Iron and Steel (Control) Order, 1956 and with the approval of the Central Government the Iron and Steel Controller hereby makes the following amendments to the Consolidated Price Notification published under S. O. 2249-ESS. COMM/Iron

and Steel 15(1) and 27(1) in Part II Section 3(ii) of the Gazette of India dated the 1st November, 1958, namely:—

Amendments

In the said notifications—

- (a) In Schedule I (Tin Plates)—Part III—Sales by Controlled Stockholders for sub-clause (ii) of clause (d) the following sub-clause shall be substituted, namely:—
 - (ii) The customer shall pay to the Controlled Stockholder, the Central Sales Tax incurred by the Controlled Stockholder in obtaining Tin Plates and shall also pay to the latter such additional Central Sales Tax, if any, paid by the latter to the Producers on account of the purchase of Tin Bars including wastage out of which the Tin Plates have been produced. The customer shall also pay to the Controlled Stockholder additional Central Sales Tax, if any, incurred by the latter on sale of Tin Plates to the Customer.'
- (b) In Schedule II (Wire and Wire Products)—Part III—Special conditions for sales by Controlled Stockholders for sub-clause (ii) of Clause (4) the following sub-clause shall be substituted, namely:—
 - (ii) The customer shall pay to the Controlled Stockholder, the Central Sales Tax incurred by the Controlled Stockholder in obtaining Wire and Wire products and shall also pay to the latter such additional Central Sales Tax, if any, paid by the latter to the Producers on account of the purchase of Billets or Rods in Coils including Wastage from which Wire and Wire products have been produced. The customer shall also pay to the Controlled Stockholder additional Central Sales Tax, if any, incurred by the latter on sale of the Wire and Wire products to the customer.'
- (c) In Schedule IV (Prime quality steel and Semis)—Part III—Special conditions for sales by Controlled Stockholders for sub-clause (ii) of clause (4), the following sub-clause shall be substituted, namely:—
 - (ii) The customer shall pay to the Controlled Stockholder, the Central Sales Tax incurred by the Controlled Stockholder in obtaining the materials (Prime quality or finished steel) and shall also pay to the Controlled Stockholder such additional Central Sales Tax, if any, paid by the latter to the Producers on account of the purchase of Semis (i.e., Blooms, Slabs or Billets) including wastage from which finished steel has been produced. The customer shall also pay to the Controlled Stockholder additional Central Sales Tax, if any, incurred by the latter on the sale of the materials to the customers.'

A. S. BAM,
Iron and Steel Controller".

[No. SC(A)-2(249)/57/C.]

C. A. NAIR, Under Secy.

(Department of Iron and Steel)

New Delhi, the 2nd November 1959

S.O. 2451/ESS.COMM/IRON AND STEEL-2(c)/AM(52).—In exercise of the powers conferred by sub-clause (c) of clause 2 of the Iron and Steel (Control) Order, 1956, the Central Government hereby directs that the following further amendment shall be made to the notification of the Government of India, in the Ministry of Steel, Mines and Fuel, No. S.R.O. 2041/ESS.COMM/IRON AND STEEL-2(c), dated the 11th June, 1957, as amended from time to time, namely:—

In the Schedule annexed to the said notification, in column 2 thereto, against 'OTHERS' for the existing entries No. 37 and 38, the following shall be substituted, namely:—

37. Deputy Chief Controllers (Export Promotion) and Controllers (Export Promotion) at Madras, Bombay and Calcutta.

38. Deputy Director of Export Promotion and Export Promotion Officer (Senior), Ministry of Commerce and Industry, New Delhi.

[No. SC(A)-1(20).]

S.O. 2452/ESS.COMM/IRON AND STEEL-2(c)/AM(51).—In exercise of the powers conferred by sub-clause (c) of clause 2 of the Iron and Steel (Control) Order, 1956, the Central Government hereby directs that the following further amendment shall be made to the notification of the Government of India, in the Ministry of Steel, Mines and Fuel, No. S.R.O. 2041/ESS.COMM/IRON AND STEEL-2(c), dated the 11th June, 1957, as amended from time to time, namely:—

In the Schedule annexed to the said notification, in columns 2 and 3 thereof, against 'ANDHRA PRADESH', the following entry shall be added, namely:—

2	3
“4. All the District Agricultural Officers, Agriculture Department, Andhra Pradesh.	4, 5, 18 & 20.”

[No. SC(A)-1(1)/59.]

S.O. 2453/ESS COMM/IRON AND STEEL-2(c)/AM(53).—In exercise of the powers conferred by sub-clause (c) of clause 2 of the Iron and Steel (Control) Order, 1956, the Central Government hereby directs that the following further amendment shall be made to the notification of the Government of India, in the Ministry of Steel, Mines and Fuel, No. S.R.O. 2041/ESS.COMM/IRON AND STEEL-2(c), dated the 11th June, 1957, as amended from time to time, namely:—

In the Schedule annexed to the said notification, in columns 2 and 3 thereof, against 'ORISSA', the following entry shall be added, namely:—

2	3
“13. All District Industries Officers in the State of Orissa	4 and 5”

[No. SC(A)-1(9)/59.]

J. S. BAIJAL, Under Secy.

MINISTRY OF FOOD AND AGRICULTURE

(Department of Agriculture)

New Delhi, the 20th October 1959

S.O. 2454.—In exercise of the powers conferred by sub-rule (2) of rule II, clause (b) of sub-rule (2) of rule 14 and sub-rule (1) of rule 23 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, the President hereby makes the following amendments in the Schedule to the notification of the Government of India in the late Ministry of Agriculture No. S. R. O. 634-A dated the 28th February, 1957, namely:—

In the said Schedule (i) in Part I for the heading "Directorate of Extension and Training", and entries thereunder the following entries shall be substituted in the relevant columns, namely:—

1	2	3	4	5
Directorate of Extension.				
All posts	Director of Administration	Director of Administration	All	Extension Commissioner, Deptt. of Agriculture.
		Administrative Officer OR Deputy Director of Administration	(i) to (iii)	Director of Administration.

1	2	3	4	5
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Extension Education Institute, Nilo- kheri All posts	Director of Ad- ministration Principal	Director of Ad- ministration	All (i) to (iii)	Extension Commis- sioner, Deptt. of Agriculture. Director of Ad- ministration.
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(ii) in Part II for the heading "Directorate of Extension and Training" and entries thereunder the following entries shall be substituted in the relevant columns, namely:—

1	2	3	4	5
---	---	---	---	---

Directorate of Ex- tension All posts	Administrative Officer/Dy. Director of Ad- ministration	Administrative Officer/ Deputy Director of Administration	All	Director of Ad- ministration.
Extension Education Institute, Nilokheri All posts	Principal	Principal	All	Director of Ad- ministration.

[No. F. 15-30/59-AE.]

SANTOKH SINGH, Under Secy.

MINISTRY OF HEALTH

New Delhi, the 13th October 1959

S.O. 2455.—In pursuance of rule 18 of the Indian Port Health Rules, 1955, the Central Government hereby specifies the major ports of Bombay, Calcutta, Cochin, Kandla, Madras and Visakhapatnam as the ports equipped for applying the sanitary measures prescribed in the said Rules to ships infected with yellow fever or suspected of yellow fever infection. Any such ship calling at a port other than the ports aforesaid shall be required to proceed at its own risk to the nearest specified port convenient to the ship.

[No. F. 15-6/57-IH.]

T. V. ANANTANARAYANAN, Under Secy.

MINISTRY OF TRANSPORT AND COMMUNICATIONS

(Department of Transport)

(Transport Wing)

MERCHANT SHIPPING

New Delhi, the 28th October 1959

S.O. 2456.—In pursuance of rule 5 of the Indian Merchant Shipping (Seamen's Employment Office, Bombay) Rules, 1954, the Central Government hereby appoints Shri T. M. Sanghavi of M/s. Great Eastern Shipping Company, Bombay, as member of the Seamen's Employment Board (Foreign-going) at the port of

Bombay, vice Shri V. V. Kothari and makes the following amendment in the notification of the Government of India in the Ministry of Transport and Communications No. 12-MT(52)/57, dated the 28th August, 1958, namely:—

In the said notification under the heading 'Seamen's Employment Board (Foreign-going) for entry No. 10 the following entry shall be substituted, namely:—

"10. Shri T. M. Sanghavi."

[No. 15-MT(9)/59.]

New Delhi, the 30th October 1959

S.O. 2457.—In exercise of the powers conferred by sub-section (3) of section 26A of the Indian Merchant Shipping Act, 1923 (21 of 1923) the Central Government hereby makes the following amendment in the Indian Merchant Shipping (Medical Examination) Rules, 1958, published under the Government of India in the Ministry of Transport and Communications notification No. G.S.R. 651, dated the 24th July, 1958, namely:—

To sub-rule (2) of rule 13 of the said rules the following proviso shall be added, namely:—

"Provided that an application may be admitted after the said period of three months if the Appeal Board is satisfied that the seaman had sufficient cause for not making the application within such period."

[No. 3-MS(16)/54-MT.]

S. K. VENKATACHALAM, Dy. Secy.

(Department of Transport)

(Roads Wing)

New Delhi, the 29th October 1959

S.O. 2458.—In exercise of the powers conferred by section 5 of the National Highways Act, 1956 (48 of 1956), the Central Government hereby direct that the functions in relation to the execution of works pertaining to the National Highway specified in the table below shall be exercisable also by the Governments of Bihar and West Bengal within their respective jurisdiction subject to the condition that in the performance of such functions, each such State Government shall be bound to comply with the rules for the time being in force made under the said Act.

TABLE

National Highway No. 32 declared as such by the notification of the Government of India in the Ministry of Transport and Communications, Department of Transport (Roads Wing) S.O. No. 568, dated the 10th April, 1958.

[No. PL-13(2)57.]

HARBANS SINGH, Under Secy.

MINISTRY OF IRRIGATION AND POWER

New Delhi, the 28th October 1959

S.O. 2459.—In exercise of the powers conferred by article 258(1) of the Constitution and in partial modification of the notification of the Government of India in the Ministry of Home Affairs No. S.R.O. 89, dated the 8th January, 1957, and in supersession of the notification of the Government of India, No. A.807(2), dated the 19th December, 1940, the President hereby entrusts, with their consent, to the Government of Assam, the functions of the Central Government under:—

(i) sub-section (1) of section 36 of the Indian Electricity Act, 1910 (9 of 1910), subject to the condition that the Electric Inspector appointed thereunder by the State Government shall be allowed to exercise

the powers and perform the functions of an Electric Inspector only in relation to oil-fields; and

(ii) sub-rule (2) of rule 7 of the Indian Electricity Rules, 1956.

[No. EL-III-354(10).]

G. D. KSHETRAPAL, Dy. Secy

MINISTRY OF WORKS, HOUSING AND SUPPLY

New Delhi, the 29th October, 1959

S.O. 2460.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 (32 of 1958), the Central Government hereby makes the following amendment in the notification to the Government of India in the Ministry of Works, Housing and Supply No. S.O. 1650 dated the 15th July, 1959, namely:—

In the table below the said notification, for the entry in column 1 against Serial No. 1(a), the following shall be substituted namely

“Director of Postal Services, New Delhi”.

[No. 14/2/59-ACC.]

S.O. 2461.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 (32 of 1958), the Central Government hereby makes the following amendment in the notification to the Government of India in the Ministry of Works, Housing and Supply No. S.O. 307 dated the 28th January, 1959, namely:—

In the table below the said notification, for the entry in column 2 against Serial No. 35(f), the following shall be substituted, namely:—

“Deputy Surveyor General, Survey of India, Dehra Dun”.

[No. 14/2/59-Acc.]

R. C. MEHRA, Under Secy.

MINISTRY OF REHABILITATION

New Delhi, the 23rd October 1959

S.O. 2462.—Whereas the Central Government is of opinion that it is necessary to acquire certain evacuee properties in the State of Bihar for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons including payment of compensation to such persons;

Now, therefore, in exercise of the powers conferred by section 12 of the Displaced Person (Compensation and Rehabilitation) Act, 1954 (44 of 1954), it is notified that the Central Government has decided to acquire, and hereby acquires, the evacuee properties specified in the Schedule.

THE SCHEDULE

Sl. No.	Particulars of the evacuee property	Name of the town and locality, village in which the property is situated. (H. No. C. No., and other particulars)	Name of the evacuee with full address
1	2	3	4
1	House-Urban	Part of Holding No. 166, C. No. 28 of Moh. Abulas Lane, Patna. (Already separated by Competent Officer, Bihar, Patna).	Motiul Imam S/o Mohd. Abdul Aas Abulas Lane, Patna.

[No. F.1(1222)-58/Comp. III/Prop. I.]

S.O. 2463.—In exercise of the powers conferred by sub-section (1) of section 3 and clause (a) of sub-section (2) of section 16 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Rehabilitation No. 1(7) (1)/-56-SIII dated the 22nd December, 1956 namely:—

In the schedule to the said notification,—

all entries under the columns "Name" and "Designation" except those relating to "Shri Des Raj, Managing Officer" shall be omitted.

[No. 1(7) (4)/57-SIII/Policy II-(I).]

S.O. 2464.—In exercise of the powers conferred by sub-section (i) of section 3 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby rescinds with effect from the 20th April, 1956 the notification specified below:—

No. SIII-7(10)/55-VI dated the 3rd September, 1955.

[No. 1(7) (4)/57-SIII/Policy II-(V).]

S.O. 2465.—In exercise of the powers conferred by sub-section (1) of section 3 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby rescinds the notifications specified below:—

1. No. SIII-7(10)/55-IV dated the 3rd September, 1955.
2. No. SIII-7(10)/55-V dated the 3rd September, 1955.
3. No. SIII-7(10)/55-VII dated the 3rd September, 1955.
4. No. SIII-7(10)/55-XI dated the 3rd September, 1955.
5. No. SIII-7(57)/55-I dated the 3rd December, 1955.
6. No. SIII-7(10)/55 dated the 13th December, 1955.
7. No. SIII-1(7) (1)/56-I dated the 7th January, 1957.
8. No. SIII-1(7) (1)/56-II dated the 7th January, 1957.
9. No. SIII-1(7) (1)/56-III dated the 7th January, 1957.
10. No. SIII-1(7) (1)/56-I dated the 10th January, 1957.
11. No. SIII-1(7) (1)/56-II dated the 10th January, 1957.
12. No. SIII-1(7) (1)/56-III dated the 10th January, 1957.
13. No. SIII-1(7) (1)/56-IV dated the 10th January, 1957.
14. No. 1(7) (45)/57-SIII dated the 19th December, 1957.

[No. 1(7) (4)/57-SIII/Policy II-(VI).]

S.O. 2466.—In exercise of the powers conferred by clause (a) of sub-section (2) of section 16 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby rescinds the notifications specified below:—

1. No. SIII-7(10)/55 dated the 4th October, 1955.
2. No. SIII-7(10)/55 dated the 10th November, 1955.
3. No. SIII-1(7) (1)/56-I dated the 23rd April, 1956.

[No. 1(7) (4)/57-SIII/Policy II-(VII).]

S.O. 2467.—In exercise of the powers conferred by sub-section (1) of section 3, and clause (a) of sub-section (2) of section 16 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby rescinds the notifications specified below:—

1. No. 1(7) (1)/56-SIII dated the 11th December, 1956.
2. No. 1(7) (4)/57-SIII dated the 14th February, 1957.

[No. 1(7) (4)/57-SIII/Policy II-(VIII).]

S.O. 2468.—In exercise of the powers conferred by clause (a) of sub-section (2) of section 16 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Rehabilitation No. SIII-7(10)/55-IX, dated the 3rd September, 1955.

In the said notification:—

The entries at Serial Nos. 1 and 2 shall be omitted.

[No. 1(7) (4)/57-SIII/Policy II-(IX).]

S.O. 2469.—In exercise of the powers conferred by clause (a) of sub-section (2) of section 16 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Rehabilitation No. SIII-7(10)/55-X, dated the 3rd September, 1955, namely:—

In the said notification, in the Schedule,—

all entries under the column "Serial No.", "Name of the person appointed" and "Present post holding" except those relating to "Shri Amrit Ram" under the heading "Ludhiana" shall be omitted.

[No. 1(7) (4)/57-SIII/Policy II-(X).]

S.O. 2470.—In exercise of the powers conferred by clause (a) of sub-section (2) of section 16 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Rehabilitation No. SIII-1(1)/(55)-VIII dated the 11th October, 1955 namely:—

In the Schedule to the said notification,—

(a) the following entries in columns No. 2 to 5 relating to Patiala shall be omitted, namely:—

2	3	4	5
Tehsil Patiala including Sub-Tehsil Samana (Area of jurisdiction of each N. T. and headquarter to be allotted to each will be fixed by Director Rehabilitation).			1 Mr. Rajinder Singh N.T. Rehab. Patiala.
Ghaur and Rajpura Qanungo circles of Tehsil Rajpura.	.	.	2 Mr. Laxmi Singh F.Q. Rehab. Patiala.
Lalru and Banur Qanungo circles of Rajpura Tehsil.	Banur		3 Mr. Jai Singh Special Saddar Qanungo, Patiala.
Mardanpur circle of Tehsil Rajpura.	Mardanpur	.	4 Mr. Dhanu Ram F.Q. Rajpura.
All the Qanungo circles in Tehsil Sirhind except those in Sub-Tehsil Amloh and Payal.	Sirhind	.	5 Mr. Ganga Ram F.Q. Bassi.
			6 Mr. Balwant Singh N. S. Qanungo, Kandaghat.
			7 Mr. Jumma Ram F. Q. Jarag.

(b) the following entries in columns 2 to 5 relating to 'Sangrur' shall be omitted, namely:—

2	3	4	5
The whole of Sangrur Tehsil and Qanungo circle, Sunam of Sub-Tehsil, Sunam.	Sangrur	.	8 Mr. Brij Lal F. Q.
Qanungo Circles Lohra, Munak and Dirba of Sub Tehsil Sunam.	Lohra	.	9 Mr. Baldev Krishan F. Q. Munak.
Whole of Tehsils Jind Marwana.	Jind	.	10 Mr. Chhoun Singh Office Qanungo, Jind.
All the Qanungo Circles of Barnala Tehsil and Qanungo Circle Alal of Sub-Tehsil, Dhuri.	Barnala	.	11 Mr. Balwant Singh Inspector of Consolidation, Sangrur.
Whole of Sub-Tehsil Dhuri except Alal Qanungo Circle.	Dhuri	.	12 Mr. Roshan Lal N. S. Q. Barnala.

(c) the following entries in columns 1 to 5 relating to 'Bhatinda' shall be omitted, namely:-

1	2	3	4	5
Bhatinda	All the Qanungo circles in Tehsil Bhatinda and Sub-Tehsil Phul.	Bhatinda	13	Mr. Gurbax Singh Naib Tehsildar Rehāb, Bhatinda.
	Tehsil Faridkot (Area of jurisdiction of each Naib Tehsildar and Headquarter to be allotted to each will be fixed by the Director Rehabilitation).		14	Mr. Jaugir Singh Office Qanungo, Bhatinda.
	Qanungo Circle Budhlada of Mansa Tehsil.	Budhlada	15	Mr. Gurdev Singh Office F. Q. Dialpura.
	All the Qanungo Circles of Mansa except Budhlada.	Mansa	16	Mr. Harchand Singh F.Q. Phul.
			17	Mr. Kart Singh, Special Saddar Qanungo, Bhatinda.

(d) the following entries in columns 2 to 5 relating to 'Kapurthala' shall be omitted, namely:-

2	3	4	5	
Bholath circle No. 1 of Tehsil Kapurthala.	To be fixed by Director Rehāb.		18	Mr. Harkishan Singh Bedi, Inspector Consolidation, Kapurthala.
Bholath circle No. 2 of Kapurthala (for this circle 3 N. Ts. are required of whom one is being appointed. Area of jurisdiction for the one appointed will be fixed by the Director Rehabilitation).			19	Shri Krishan Dutt Qanungo, Bhatinda District.
Kapurthala Qanungo Circle No. 1	Kapurthala		20	Mr. Ram Kishan, Office Qanungo Natwana.
Kapurthala Qanungo Circle No. 2	Do.		21	Mr. Sarjit Singh, F. Q. Bhdāur in Sangiur District.
Kapurthala Qanungo Circle No. 3	Do.		22	Mr. Brij Lal Office Qanungo, Malerkotla.
Sub-Tehsil Sultanpur (for this sub-tehsil 3 N. Ts. are required, two are being appointed. Area of jurisdiction and headquarters will be fixed by the Director Rehabilitation. Orders for remaining one will follow).			23	Mr. Dewan Chand, Naib Tehsildar Betterment Board, Patiala.
			24	Mr. Gujcharan Singh, S. Basil Baqi Nawis, Patiala.

[No. 1(7) (4)/57-S-III Policy II-(XI).]

New Delhi, the 27th October 1959

S.O. 2471.—In exercise of the powers conferred by Clause (a) of sub-section (2) of Section 16 of the Displaced Persons (Compensation and Rehabilitation) Act No. 44 of 1954, the Central Government hereby appoints, for the States of Bihar and Orissa, Shri G. S. Srivastava as Managing Officer, for the custody, management and disposal of compensation pool.

[No. 16(13)-Admn. (Prop)/59.]

New Delhi, the 29th October 1959

S.O. 2472—Whereas the Central Government is of opinion that it is necessary to acquire the evacuate properties specified in the Schedule below in the Union territory of Delhi for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons;

Now, Therefore, in exercise of the powers conferred by section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), it is notified that the Central Government has decided to acquire, and hereby acquires, the said evacuate properties.

THE SCHEDULE

List of Urban area of village "Azadpur"

Sr. No.	Particulars of Khewat No.	Property Khasra No.	Area		Name of the Evacuee with the rights in Property	Remarks
			Big.	Bis.		
1	12/101	492 61/1, 3 63/2 . . 21 . . 56 . . 373/105 . . 95 . . 327 . . 328 . . 407 133/1 . .	16 24 12 3 1 0 0 6 8	14 16 17 0 4 6 9 1 6	Azis-Uddin s/o Mst. Rusti with Share $\frac{1}{2}$, Mohd. Ramzan and Mohd. Rafiq s/o Ghisay Khan, eva- cuees, with owner- ship rights.	
			73	73		

List of Urban area of village "Mehariatali"

Sr. No.	Particulars of Khewat No.	Property Khasra No.	Area		Name of the evacuee with the rights in property.	Remarks
			Big.	Bis.		
1	571/1 . .	2	3		Tasdiq Hussain, Azad Hussain, Sajat Hussain and Faraq Hussain s/o Nazar Hussain with share, 28, Mst. Sadul Nasa w/o Nazar Hus- sain with $\frac{5}{7}$ share, Mst. Mahmood Begum, and Mst. Am- tul Fatima d/o Na- zar Hussain with $\frac{7}{14}$ share, out of $\frac{1}{4}$ th share, Anait Hussain) Wafat Hussain s/o Rustam Ali with share $\frac{1}{2}$, Sajat Hus- sain s/o Sharif Hus- sain with $\frac{1}{2}$ share, evacuees, with owner- ship rights.	

List of Urban area of village "Rajpur Chawan"

Sr. No.	Particulars of Khewat No.	Property Khasra No.	Area		Name of the evacuee with the rights in the property	Remarks
			Big	Bis		
I	18/18	91	5	2		
	28/28	93	1	16	Maqid Ahmad, son with half share;	
	36/37	95	1	13	share Banu Begum	
	50/56	92	5	6	and Kalsu Banu	
	64/70	94	2	0	Begum, Daughters	
	83/94	97/1	4	5	with half share,	
	III/141	68	11	3	of Razulaha Begum,	
		69	0	2	evacuees, with	
		674/67	8	12	ownership rights.	
		673/66	5	5		
	III/143	569/70	1	2		
	III/142	62 Min.	0	5		
		Total	46	11		

List of Urban area of village "Okhla"

Sr. No.	Particulars of Khewat No.	Property Khasra No.	Area		Name of the evacuee with the rights in property	Remarks
			Big.	Bis.		
I	37/143-146	391/311/1	3	6	Nasir Uddin s/o Abdul Satar, eva- cuee, with owner- ship rights	

List of Urban area of village "Hauz Ram"

Sr. No	Particulars of Khewat No.	Property Khasra No.	Area		Name of the evacuee with the rights in property	Remarks
			Big	Bis.		
I	106/277	33/1	0	7	Bure Khan s/o Imam Khan, evacuee, with ownership rights.	

[No 1(1218)-58/Comp III Prop-I]

ORDER

New Delhi, the 23rd October 1959

S.O. 2473.—In exercise of the powers conferred by sub-section (1) of section 3 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the Central Government hereby rescinds the orders specified below:—

1. No SIII-7(57)/55-II dated the 3rd December, 1955.
2. No SIII-1(7)(1)/56-IV dated the 7th January, 1957.
3. No SIII-1(7)(1)/56-V dated the 10th January, 1957.

[No 1(7)(4)/57 SIII/Policy II-(III)]

M. L PURI,
Settlement Commissioner and ex-officio Under Secy.

ORDERS

New Delhi, the 23rd October 1959

S.O. 2474.—In exercise of the powers conferred by sub-section 2 of Section 34 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the Chief Settlement Commissioner hereby rescinds the orders specified below:

1. No. SIII-7(10)/55-I dated the 3rd September, 1955.
2. No. SIII-7(10)/55-II dated the 3rd September, 1955.
3. No. SIII-7(10)/55-III dated the 3rd September, 1955.
4. No. 9(10) Comp. II/57 dated the 10th October, 1955.
5. No. 9(29) Comp. II/56-I dated the 11th January, 1957.
6. No. 9(29) Comp. II/56-III dated the 11th January, 1957.
7. No. 9(10) Comp. II/57 dated the 27th December, 1957.

[No. 1(7) (4)/57-SIII/Policy II-(II).]

S.O. 2475.—In exercise of the powers conferred by sub-section 2 of section 35 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 the Chief Settlement Commissioner hereby rescinds the orders specified below:—

1. No. 9(29) Com. II/56-IV dated the 11th January, 1957.
2. No. 9(29) Comp. II/56-V dated the 11th January, 1957.

[No. 1(7) (4)/57-SIII/Policy II-(IV).]

L. J. JOHNSON, Chief Settlement Commissioner.

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 27th October 1959

S.O. 2476.—In exercise of the powers conferred by sub-section (1) of section 13 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government hereby appoints Shri Ram Palkash Sood to be an Inspector for the whole of the State of Punjab and the Union territory of Himachal Pradesh for the purposes of the said Act and of any scheme made thereunder, in relation to an establishment belonging to, or under the control of, the Central Government or in relation to an establishment connected with a railway company, a major port, a mine or an oil-field or a controlled industry.

[No. PF. I/31(575)59.]

P. D. GAIHA, Under Secy.

New Delhi, the 29th October 1959

S.O. 2477.—Whereas the Central Government is satisfied that Shri K. Chatterton nominated under clause (f) of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948) to represent the Employers' Federation of India on the Employees' State Insurance Corporation has retired and left India and thereby ceased to represent the said Federation;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 12 of the said Act, the Central Government hereby declares that Shri K. Chatterton shall cease to be a member of the said Corporation with effect from the date of issue of this notification.

[No. F. HI-1(142)/I/59.]

S.O. 2478.—In pursuance of section 4 of the Employees' State Insurance Act, 1948, (34 of 1948), the Central Government hereby nominates Shri C. I. Turcan, Messers Andrew Yule and Co., Ltd., 8, Clive Row, Calcutta, as a member of the Employees' State Insurance Corporation in the place of Shri K. Chatterton who has ceased to be a member of the Corporation under sub-section (2) of section 12 of the said Act and makes the following further amendment in the notification of the Government of India in the Ministry of Labour and Employment No. HI-1

(196)/57, dated the 15th March, 1958, constituting the Employees' State Insurance Corporation, namely:—

In the said notification, under the heading "Members", under the sub-heading " (Nominated by the Central Government under clause (f) of section 4 in consultation with organisations of employers)", for the item "(20) Shri K. Chatterton, Messrs. Martin Burn Ltd., 12, Mission Row, Calcutta—1", the following item shall be substituted, namely:—

"20. Shri C. I. Turcan, Messrs. Andrew Yule and Co. Ltd., 8, Clive Row, Calcutta."

[No. F. HI-1(142)/II/59.]

S.O. 2479.—In exercise of the powers conferred by section 90 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts each of the undermentioned factories from all the provisions of the said Act for the further period specified against it:—

Factories belonging to the Central Public Works Department under the Period of exemption
Ministry of Works, Housing & Supply.

1. The Electric Fans, Motors and Appliances Repair Shop, Barakhamba Road, New Delhi	For one year with effect on and from 14-9-59
2. The Horticultural Tools and Implements Repair Shop, New Delhi	Do.
3. The Auto and General Repairs and General Machine Shop and Foundry, American Warhouse, Factory Road, New Delhi	Do.
4. The Desert Cooler, Refrigerator, Air Conditioning and Electric Repair Workshop, Barakhamba Road, New Delhi.	Do.

Factory belonging to the Ministry of Transport and Communications.

5. Radio Construction and Development Unit of the Civil Aviation Department, New Delhi.	For one year with effect on and from 8-9-1959.
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[No. F. HI-6(151)/59.]

S.O. 2480.—In exercise of the powers conferred by section 88 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts, for a period of one year with effect from the date of publication of this Notification, Shri V. D. Bakshi, an employee of the Central Government, now on deputation with Messrs Hindustan Housing Factory, Limited, New Delhi, from the operation of the said Act, subject to the following conditions, namely:—

- (i) the aforesaid factory shall maintain a register showing the name and designation of the exempted employee; and
- (ii) notwithstanding this exemption, the exempted employee shall continue to receive such benefits under the said Act to which he might have qualified on the basis of contributions paid before the date of exemption.

[No. F. HI-6(163)/59.]

BALWANT SINGH, Under Secy.

New Delhi, the 30th October 1959

S.O. 2481.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the Dalingkote Colliery and their workmen.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD

REFERENCE NO. 43 OF 1959

Employers in relation to the Dalingkote colliery.

AND

Their workmen.

Dhanbad, the 24th October 1959

PRESENT

Shri Salim M. Merchant, B.A., LL.B., Presiding Officer.

APPEARANCES:

Shri P. K. Ray, Managing Director, M/s. M. K. Ray (P.) Ltd., for the employer, on 6th August, 1959 and no appearance thereafter.

Shri S. Das Gupta, Secretary, Indian National Mine Workers Federation, with Shri J. K. Maliyil, Secretary, Darjeeling Coalfield Workers Union—for the workmen.

STATE: West Bengal.

INDUSTRY: COAL.

AWARD

The Government of India, Ministry of Labour & Employment, by Order No. LR.II/2(94)/59, dated the 29th June, 1959, made in exercise of the powers conferred by clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act 1947 (XIV of 47) was pleased to refer to me for adjudication the industrial dispute between the parties above named in respect of the matters specified in the following schedule to the said Order:—

“Whether the management of Dalingkote colliery was justified in retrenching Shri H. C. Chakrabarty? If not, to what relief is he entitled?”

2. It is admitted that H. C. Chakrabarty, over whose retrenchment this industrial dispute has arisen, joined service on 5th October, 1951 and that he was retrenched from service by notice dated 24th April, 1959 (Exhibit W-D), which was signed by Shri P. K. Ray, Managing Director for M. K. Ray (P.) Limited. According to the Union, on the date of his retrenchment he was working as a cashier of the Dalingkote colliery as also of Himalaya Coal and Mineral Industries, which both belong to M. K. Ray (P.) Limited. It appears that on 25th April, 1959, the Secretary of the Darjeeling Coalfield Workers Union raised an industrial dispute with regard to this retrenchment by addressing a letter No. 256/59, dated 25th April, 1959 to the Conciliation Officer (Central) Raniganj, in which he contended that Chakrabarty's retrenchment was illegal, (1) as he was senior to the other workmen who were retained in service i.e., the principle of “last come first go” was not observed, (2) that Chakrabarty's services were terminated to victimise him for his trade union activities in as much as he was a member of the Executive Committee of the union and (3) that the notice of the management of 24th April, 1959, retrenching Chakrabarty's from service, purporting to be under Section 25FFF of the Act, was not proper or legal.

3. The employers in their rejoinder dated 2nd August, 1959, which is signed by Shri P. K. Ray, Managing Director of the M. K. Ray (P.) Ltd., have stated that on account of the restrictions imposed by the Deputy Coal Controller (Distribution) on the sale of coal of the Dalingkote colliery, the management apprehended that it may be obliged to close down the colliery and retrench the workers; that when it came to be known that retrenchment was going to be effected some of the clerical staff of the colliery formed a union in June 1958, to resist the apprehended retrenchment; that H. C. Chakrabarty was not the cashier of Himalaya coal and Mineral Industries but was a cashier of the Dalingkote colliery before his retrenchment on 24th April, 1959; that it was not a fact that H. C. Chakrabarty was senior to many other employees who were retained in service. The management had denied that he was retrenched because he was an Executive Committee Member of the Darjeeling Coalfield Workers Union, but that his services were dispensed with in consequence of the company's decision to suspend mining operations of this colliery indefinitely which became necessary as a result of serious fall in the coal sales due to the new procedure introduced and restricts imposed by the Deputy Coal Controller (Distribution). Whilst denying the allegations of victimisation and harassment, the management has alleged that the union leaders had resorted to violence and intimidation and had made serious allegations of corruption and dishonest practices against the management with the motive of

taking over the management of the colliery. The management has pleaded that curtailment of work in the Dalingkote colliery was due to special restrictions imposed by the authorities and therefore retrenchment became imperative and was due to reasons beyond the control of the management and therefore the provisions of the proviso to Section 25FFF of the Act applied. The management has stated that it had remitted to Chakrabarty by money orders the sum of Rs. 946.05 nP. which according to it he was entitled to by way of retrenchment compensation, one month's notice pay, bonus and earned salary from 1st April, 1959 to 24th April, 1959, less an advance of Rs. 66.11 nP. outstanding against him, but he had refused to accept the same. The management had denied that anything more is due to H. C. Chakrabarty and that he has no other claim of whatsoever nature against the company.

4. It may be stated that this rejoinder of the management was received by the Tribunal on 5th August, 1959, a day previous to the date on which the hearing of the dispute, was fixed i.e., 6th August, 1959. The copy of the rejoinder had not been served on the union though the employers were directed to do so by the Tribunal's notice dated 15th July, 1959, consequently, as the Union's representatives wanted time to file their reply to this rejoinder and a copy thereof was served on them only in court, the hearing had to be adjourned to 14th September, 1959, and I made an order directing the employers to pay Rs. 50 as costs of the adjournment to the union.

5. Thereafter, the union filed its reply dated 1st September, 1959, to the rejoinder of the management dated 2nd August, 1959, in which it has, after reiterating the contentions stated earlier, stated that the employers owned two collieries namely Dalingkote and the East Bagrakote colliery and a common pool of workers are kept and they are freely transferred from one colliery to another and therefore for the purposes of retrenchment the entire body of workmen employed in the two collieries should be taken into account. The union has further contended that Chakrabarty was senior to one Shri S. Dutta Roy who was appointed and doing the work of a Cashier after Chakrabarty was retrenched, as also to many other clerks who had been retained in service, and therefore the retrenchment of Chakrabarty was neither legal nor justified. It is further stated that Chakrabarty was victimised because he was a member of the Executive Committee of the Darjeeling Coalfield Workers Union. It is further urged that Chakrabarty's retrenchment was not warranted as the colliery had not closed down but had merely suspended its operations as admitted by the company in its rejoinder. It is, therefore, contended that Section 25FFF of the Act did not apply to the circumstances of the present case. The union has, therefore, prayed that the management should be directed to reinstate Chakrabarty in his former post of cashier and to pay him all his back wages and allowances from the date of his discharge from service to the date of his reinstatement.

6. Thereafter, on 12th September, 1959, the Tribunal received a written statement dated 10th September, 1959 signed by one S. Bhattacharjee as Director of M. K. Ray (Private) Limited purporting to be in reply to the statement of 1st September, 1959, in which it had denied that this company also own the East Bagrakote colliery and has control over the same. The company also submitted a supplementary rejoinder dated 8th September, 1959 which was received on 11th September, 1959. This supplementary written statement is also signed by Shri S. Bhattacharjee in his capacity as Director of M. K. Ray (Private) Ltd.

7. However, at the hearing on 14th September, 1959, Shri S. Bhattacharjee, after the dispute was heard for sometime, filed a written application for permission to withdraw the two written statements dated 8th September, 1959 and 10th September, 1959 which bore his signatures and also for permission to withdraw his appearance in this case, on the ground that he had no personal knowledge of the facts of the case. The representatives of the union did not object to this application. As it appeared to me that Shri S. Bhattacharjee had no personal knowledge of the facts of the case and that as stated by him he had been co-opted as Director of M. K. Ray (Private) Limited only on 1st September, 1959, I allowed him to withdraw from the case and adjourned the hearing to 13th October, 1959, making an order for Rs. 75 as costs of the adjournment in favour of the Union.

8. On 14th October, 1959, one Shri K. B. Mukherji, a clerk authorised by Shri P. K. Ray, filed an application signed by Shri P. K. Ray, dated 16th September, 1959 in which he pleaded inability to attend the hearing. Along with the petition an affidavit of Shri P. K. Ray dated 12th October, 1959, a copy of the Calcutta Gazette of 28th August, 1959, a statement dated 16th September, 1959 and a supplementary rejoinder also dated 16th September, 1959, were filed. Shri K. B. Mukherji, however, stated that he had no instructions to represent the

employers beyond filing the documents which he produced. A telegram was received from Shri P. K. Ray asking for an adjournment but the application was opposed by the Union. In his petition dated 16th September, 1959 filed on 14th October, 1959, Shri P. K. Ray had stated that as he would be heavily engaged for a long time in his efforts to set aside the order of the West Bengal Government cancelling the lease dated 12th March, 1956 on which Dalingkote colliery is based, it would not be possible for him to attend the hearing of this reference and that this dispute should be decided on consideration of the documents filed by the management. Considering this and on being satisfied that the application for adjournment was not *bona fide* by an order separately passed by me I refused the application for adjournment and the hearing had to be proceeded with in the absence of the representatives of the employers.

9. Before dealing with the merits of the dispute under reference, it is necessary to state that I have dealt with the history of the Dalingkote colliery and the events and circumstances leading to the suspension of its mining operations, in an earlier dispute, being Reference No. 1 of 1959, which related to the retrenchment from service of 19 other workmen of the Dalingkote colliery which had been effected between 31st May, 1958 and 3rd September, 1958. By my Award in that dispute I held that the retrenchment of those 19 workmen was not justified nor in order and I directed the management to pay them notice pay and retrenchment compensation to which they were entitled under the provisions of clauses (a) and (b) of Section 25F of the Industrial Disputes Act 1947 (hereinafter referred to as the Act) as also additional compensation equivalent to 2 months' pay (basic wages and dearness allowance) for their illegal and unjustified retrenchment (See Government of India Gazette, Part II, Section 3(ii) dated 29th August, 1959).

10. The two questions that have been referred for adjudication in this dispute are (1) whether the management of Dalingkote colliery was justified in retrenching H. C. Chakrabarty and if not (2) to what relief he is entitled.

11. The union has contended firstly that the retrenchment of Chakrabarty was not justified because he had been victimised for his trade union activities. In support of this contention it has pointed out that H. C. Chakrabarty was elected as a member of the executive committee of the Darjeeling Coalfield Workers Union, which was formed on 2nd May, 1958. The management on the other hand has pointed out in its written statement that Chakrabarty was continued in service, in spite of his having been elected as an Executive Committee Member of the Union, right till the date of his retrenchment on 24th April, 1959 and that if the intention of the management was that he should be victimised for his trade union activities, then, he would have been retrenched as soon as the union was formed in May 1958. I am inclined to accept this contention of the management. In my award in the industrial dispute Reference No. 1 of 1959 I hold that the retrenchment of the 19 workmen concerned in that dispute was an instance of unfair labour practice and that some of them had been selected for retrenchment because they had formed a union. These workmen were retrenched soon after the Union was formed between 31st May, 1958 and 5th September, 1958. But here Chakrabarty was continued in service till April, 1959 which negatives the suggestion that he was sent away because he had been elected a member of the executive committee of the Union.

12. The union has next contended that the retrenchment of H. C. Chakrabarty was not justified, (1) as there had been no closure of the Dalingkote colliery and that the management had merely curtailed production on an apprehension that there would be a fall in the sale of its coal because of certain restrictions having been placed on the free movement of its coal, (2) that H. C. Chakrabarty was appointed as cashier not only of the Dalingkote colliery, but also of the Himalaya Coal and Mineral Industries, which latter company is still continuing and (3) that the retrenchment of H. C. Chakrabarty was illegal and unjustified being in violation of the principles of last come first go as embodied in Section 25G of the Industrial Disputes 1947, and (4) that the notice of retrenchment dated 24th November, 1958, under the proviso to Section 25FFF(1) of the Industrial Disputes Act 1947 was illegal and improper and that the management was not justified in limiting the retrenchment compensation payable to Chakrabarty to three months' average pay.

13. With regard to the closure of Dalingkote colliery, I have in my award in Reference No. 1 of 1959 dealt in detail with the circumstances relating to the reduction of work in that colliery and I had held that there has been no complete closure of that colliery till the dates of the retrenchment of the 19 workmen concerned in that dispute. In this case, the company has relied upon the order of the Government of West Bengal dated 28th August, 1959, by which the Mining

lease dated 12th March, 1956, in favour of M. K. Ray (P) Ltd., of the coal lands on which the Dalingkote colliery is based was determined. But that order is subsequent to the date, i.e., 24th April, 1959, on which Chakrabarty was retrenched and that can therefore be no plea in justification of his retrenchment. The management has also relied upon a letter No. 11/6/59 C.I. dated 17th August, 1959 from the Ministry of Steel, Mines and Fuel, Government of India, to Messrs. Himalaya Coal and Mineral Industries and it has relied upon a copy of that order annexed to its written statement dated 16th September, 1959. But as I have stated earlier no one appeared on behalf of the management to prove that letter and besides that letter being of a date later than the date on which Chakrabarty was retrenched, it cannot help the management. The company's contention that the Dalingkote colliery was closed down because of circumstances beyond its control and therefore Chakrabarty's retrenchment was justified and fell under the provisions of the proviso to Section 25FFF of the Industrial Disputes Act 1947 cannot be accepted.

14. The union has next argued that Chakrabarty was appointed and working as the cashier of the Himalaya Coal and Mineral Industries, which is still continuing, whilst the management in its written statement has stated that Chakrabarty was working as the Cashier of the Dalingkote colliery. Now, the Union at the hearing has produced the order dated 20th June, 1952, signed by Shri P. K. Ray, Managing Director, Himalaya Coal and Mineral Industries, addressed to Chakrabarty as Cashier, Himalaya Coal and Mineral Industries, in which it is stated that his (Chakrabarty's) services were extended indefinitely. (Exhibit W-A). It appears that Messrs. M. K. Ray (Private) Limited who own the Dalingkote colliery, also own the Himalaya Coal and Mineral Industries and it appears that whilst working as Cashier of Himalaya Coal and Mineral Industries, Chakrabarty was also working as the Cashier of the Dalingkote colliery which is owned by M. K. Ray (P.) Limited. The Union's case is that the Himalaya Coal and Mineral Industries is still continuing to function and that, therefore, the retrenchment of Chakrabarty on the allegation that the Dalingkote colliery has closed down is not justified. But, the statement of the management in its rejoinder dated 2nd August, 1959, that Chakrabarty was working as the Cashier of the Dalingkote colliery on the date of his retrenchment on 24th April, 1959 and not as the cashier of the Himalaya Coal and Mineral Industries, has not been denied by the union in its written reply dated 1st September, 1959. This coupled with the fact that this dispute as referred is between employers in relation to Dalingkote colliery and its workmen and not between Himalaya Coal and Mineral Industries and its workmen, clearly shows that on the date of his retrenchment Chakrabarty was working as Cashier of the Dalingkote colliery and this dispute must be decided on that basis.

15. The next contention of the union is that the retrenchment of Chakrabarty was illegal as it was in breach of the provisions of Section 25G of the Act in as much the principle of first come last go was not observed and men junior to him in service have been retained. The union's case is that when Chakrabarty was retrenched on 24th April, 1959, he handed over charge as Cashier to S. Dutta Roy, who was junior to him in service, and S. Dutta Roy has been retained in service. The management in its written rejoinders has stated that S. Dutta Roy was retrenched in service on 1st September, 1958. The union's contention is that this is a false statement. The union at the hearing led the evidence of Shri Kumud Behar Roy (W.W.1) who is one of the retrenched employees of the Dalingkote colliery and he has stated on solemn affirmation that S. Dutta Roy was junior to H. C. Chakrabarty and was continued in service after he was retrenched on 24th April, 1959, and that the management's statement that Dutta Roy was retrenched on 1st September, 1958, was a false one. In support, the witness produced two documents, one the postal acknowledgment of a registered letter addressed to the Managing Director, M. K. Ray (Private) Ltd., at Dalingkote colliery, which bears the signature in acknowledgment of S. Dutta Roy under date 8th May, 1959 (Exhibit W-B) and the other a tour programme of H. C. Chakrabarty dated 1st January, 1959 (Exhibit W-C) which bears the signature of Shri S. Dutta Roy under date 1st January, 1959. These two documents in my opinion clearly establish that Shri S. Dutta Roy was not retrenched from service on 1st September, 1958 as falsely stated by the company and that he (S. Dutta Roy) had continued in service even after H. C. Chakrabarty was retrenched from service on 24th April, 1959. The management has sought to rely upon an alleged seniority list maintained by it under Rule 77 of the Industrial Disputes (Central) Rules 1957 and has annexed it to its written statement dated 8th September, 1959. But that written statement, as I have stated earlier, was signed by Shri S. Bhattacharjee, who withdrew the same at the hearing on 14th September, 1959 and thereafter no one has appeared to prove the same. It is

further significant that the said list does not contain the name of S. Dutta Roy. I, therefore, accept the union's story that S. Dutta Roy was junior in service to H. C. Chakrabarty and that the management in retaining him in service as a cashier had acted in violation of the principles of last come first go and therefore the retrenchment of H. C. Chakrabarty was in violation of the provisions of Section 25G of the Act.

16. I am also not satisfied that the retrenchment of H. C. Chakrabarty is governed by the proviso to Section 25FFF of the Industrial Disputes Act 1947. I am not satisfied that the Dalingkote colliery had closed down by the date on which H. C. Chakrabarty was retrenched or that the closure was on account of unavoidable circumstances beyond the control of the employer. The notice of retrenchment dated 24th April, 1959 served on H. C. Chakrabarty under the provisions of the proviso to Section 25FFF(1) of the Act limiting his compensation to 3 months' average pay must therefore be held to be illegal. In fact though under the proviso to Section 25FFF the compensation should be limited to 3 months' average pay, the company in the notice has calculated the retrenchment compensation payable to Chakrabarty at $3\frac{1}{2}$ months' average pay. In my opinion, H. C. Chakrabarty's retrenchment is governed by the provisions of Section 25F (a) and (b) of the Industrial Disputes Act, 1947.

17. For all these reasons, I answer the first issue under reference in the negative and hold that the retrenchment of H. C. Chakrabarty was not justified.

18. The next question to consider is what relief is H. C. Chakrabarty entitled to? The union has claimed that the management should be ordered to reinstate Chakrabarty in service with all back wages from the date of his retrenchment i.e., from 24th April, 1959 till the date he is reinstated in service. Having held that his retrenchment was unjustified and was also illegal, I would ordinarily have ordered his reinstatement in service. But since his retrenchment, the West Bengal Government has by its order dated 12th August, 1959 cancelled the Mining Lease of the land on which the Dalingkote colliery is based and the management has pleaded that as its Mining Lease has been cancelled in respect of the Dalingkote colliery, there can be no question of H. C. Chakrabarty being reinstated in service. In these circumstances, any order of reinstatement of H. C. Chakrabarty in service would be impracticable and I am doubtful whether it would be in his interest. He would, however, be entitled under Section 25H of the Act re-employment in service in the colliery if and when it is at all re-started. That right in him remains unaffected even though I do not direct his reinstatement.

19. I think, in the facts and circumstances of the case, the proper relief to grant him would be to grant him all the retrenchment compensation under the provisions of clauses (a) and (b) of Section 25F of the Industrial Dispute Act 1947, i.e., one month's pay in lieu of notice and retrenchment compensation equivalent to 15 days' average pay for every completed year of service or any part thereof in excess of six months. He will also be entitled to his earned salary from 1st April, 1959 to 24th April, 1959, as also the bonus to which he was entitled on the date of his retrenchment as also the leave wages which was due to him. The company by its notice dated 24th April, 1959 had calculated that H. C. Chakrabarty was entitled to Rs. 946.05 nP. on the following calculations:—

$3\frac{1}{2}$ months' average pay by way of retrenchment compensation on the basis of his average basic pay at the rate of Rs. 175 per month	..	Rs. 612.50 nP.
One month's pay in lieu of notice	..	Rs. 175.00
Bonus earned	..	Rs. 108.00
Earned salary from 1st April, 1959 to 24th April, 1959	..	Rs. 116.66
		1,012.16
Less advance	..	Rs. 66.11
		Rs. 946.05

As I have stated the management had forwarded this amount to him by Money Orders but the same were refused by him.

20. The Union, on the other hand, has at my request filed a statement by which it has submitted the following calculation showing Rs. 1622.10 nP. as being due to H. C. Chakrabarty:—

4 (four) months average pay by way of compensation for service from 5th October, 1951, to 21st April, 1959, i.e., more than 7½ years—8 years at Rs. 179.87 nP. on the basis of 120 working days made up as follows:—

Basic Pay	Rs. 108.00
Dearness Allowance	67.00
Enhanced D.A.	4.87
	179.87
	Rs. 830.49
Notice pay	179.87
Earned wages from 1-4-59 to 24-4-59	144.00
Bonus for quarter ending March, 1959	108.00
Two months leave wages	359.74
Total.	Rs. 1,622.10

With regard to two months' leave pay the union has claimed it in its written statement dated 1st September, 1959 under the provisions of Section 51(6) of the Mines Act, 1952. The management's case is that the workmen were offered monsoon leave in 1958 but did not avail themselves of it. But the management has not proved this allegation, which is also difficult to believe in face of the fact that even H. C. Chakrabarty was continued in service even after the monsoon of 1958. I would, therefore, allow this claim made by the union.

21. The union has denied that any advances were made to H. C. Chakrabarty and there is no evidence from the management to establish this advance.

22. I, therefore, accept the claim of the sum of Rs. 1622.10 as being payable to H. C. Chakrabarty on the date of his retrenchment by way of notice pay and retrenchment compensation under the provisions of clauses (a) and (b) of Section 25F of the Act and by way of earned leave, earned pay from 1st April, 1959 to 24th April, 1959, and bonus due to him.

23. The next question to consider is what relief should be granted to H. C. Chakrabarty for his unjustified retrenchment. The union has claimed reinstatement with full back wages. As I do not consider a direction for reinstatement as being practicable, I think the ends of justice would be met if the management were directed to pay him additional compensation equivalent to two months basic wages and dearness allowance to which he was entitled on the date of his retrenchment. I would, therefore, direct the company to pay him an additional compensation of Rs. 359.74 nP. for his unjustified retrenchment. This would mean that he would be entitled to Rs. 1622.10 plus Rs. 359.74, i.e., in all Rs. 1981.84 nP. and I direct the company to pay the same to him within a month of the date this award comes into operation.

24. This is a fit case where costs should be awarded to the union. The management has not paid the costs which I ordered for the adjournments which had to be granted on 6th August, 1959 and on 14th September, 1959 amounting to Rs. 125. In addition, I award another Rs. 100 as costs to the Union, making the total amount of costs payable to Rs. 225 which should also be paid within one month from the date this award comes into operation.

DHANBAD;

SALIM M. MERCHANT, Presiding Officer,

The 24th October 1959.

[No. LRII-2(94)/59.]

PYARE LAL GUPTA, Under Secy.

New Delhi, the 3rd November 1959

S.O. 2482.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Industrial Tribunal, Delhi, in the industrial dispute between the employers in relation to the Messrs Bikaner Gypsums Ltd. and their workmen.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL: DELHI.

PRESENT:

Shri E. Krishna Murti, Central Govt. Industrial Tribunal.

13th October, 1959

I.D. No. 414 of 1959

BETWEEN

The Employers in relation to M/s. Bikaner Gypsums Ltd.

AND

Their workmen.

Dr. Anand Parkash for the management.

Shri Jai Chand Lal Nahatta for the workmen.

AWARD

By G.O. No. S.O. LRII/64(14)/58 Vol.II dated the 20th May, 1959, the industrial dispute, between the employers in relation to Messrs Bikaner Gypsums Limited, and their workmen has been referred to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947.

2. The term of reference is as follows:—

Whether the dismissal of the under mentioned workmen from service by the management of M/s Bikaner Gypsums Ltd., Bikaner, was justified, and if not, to what relief these workmen are entitled?

1. Shri R. C. Shukla, Chemist.
2. Shri B. N. Sharma, Clerk.
3. Shri Jagdish Ram, Sampler B.
4. Shri Satya Narain, Driver B.

3. It is alleged in the statement of claim that the dismissal of the four workmen in question is, unlawful, that the action of the management is *mala fide*, that these workmen were dismissed on account of their union activities, that the management had practised victimisation and unfair labour practice, that the action of the management is also against the standing orders, that there was no fair and reasonable enquiry, that the enquiry was conducted in an ex parte manner, that no opportunity was given to the workmen to defend themselves, and to produce their defence witnesses, that even after the close of the evidence on behalf of the management, some witnesses were recalled and made to change their statements, that the Enquiry Officer was prejudiced and biased, that the enquiry was conducted against the principles of natural justice, that the orders of dismissal should be set aside, and that the four workmen should be directed to be re-instated in service, with full back wages upto the date of re-instatement.

4. The contention on behalf of the management is, that it is not true that Shri B. N. Sharma, was dismissed, that his services were only terminated, that the allegations made by the Union, are all denied, that there has been no contravention of Standing Orders, that the allegations against the Enquiry Officer are all false, and malicious, that all the four workmen were properly charged, and were found guilty after an elaborate enquiry into the charges against them, that it is not true that the Enquiry Officer was prejudiced, or biased against the workmen that any delay in the matter of enquiry was occasioned by the dilatory tactics of the workmen themselves, that it is not true, that there is any discrimination against Shri R. C. Shukla, that it is not true that the enquiry was against the principles of natural justice, or against the Standing Orders, that the action taken against the workmen is *bona fide*, legal, and fully justified, and there has been no victimisation or unfair labour practice.

5. Both parties have agreed that the issue is as in the term of reference.
6. This is a dispute between the employers in relation to Messrs Bikaner Gypsums Limited, Bikaner, and their workmen.
7. The question raised by the reference is, whether the dismissal of (1) R. C. Shukla, Chemist, (2) B. N. Sharma, Clerk, (3) Jagdish Ram, Sampler B,

and (4) Satya Narain, Driver B, was justified, and if not, to what relief these workmen are entitled.

8. At the outset, it is stated on behalf of the management, that the wording of the reference is not correct and, so far as Shri B. N. Sharma is concerned, there is no order of dismissal against him, but only an order of termination of service.

9. The contention on behalf of the workmen is, that the findings of the Enquiry Officer, that the several workmen are guilty of the charges against them are not justified by the evidence on record, that they are completely baseless, and are vitiated by basic errors of fact, and that the action of the management against all the four workmen is not justified. Before dealing with the contention raised on behalf of the workmen, it is necessary to bear in mind, that the responsibility for maintenance of discipline inside the establishment of a company is that of the management. In the decision in Indian Iron & Steel Company and their workmen (1958 I LLJ 260), it was laid down by the Supreme Court that the management of a concern has power to direct its own internal administration and discipline. This power is not unlimited, and, when a dispute arises, Industrial Tribunals have been given the power to see whether the termination of service of a workman is justified, and to give appropriate relief. In the case of dismissal for mis-conduct, the tribunal does not however act as a Court of appeal, and substitute its own judgment for that of the management. It will interfere (i) when there is want of good faith, (ii) when there is victimisation or unfair labour practice, (iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and (iv) when on the materials the finding is completely baseless or perverse. The same principle was enunciated in the decision in G. Mckenzie & Co. Ltd. (1959 I LLJ 235). In the decision in Balipara Tea Estate (1959 II LLJ 245), it was laid down, that it is well settled, that a tribunal has to find only, whether there was justification for the management to dismiss an employee, and whether a case of mis-conduct had been made out at the enquiry held by it. The learned counsel for the workmen has argued, that the management have failed to justify the action taken by them on the evidence on record in all the cases, and that the findings of the Enquiry Officer to the effect that the charges were proved, are vitiated, for all or any of the reasons set out above. In other words it is urged, that the Enquiry Officer has come to the conclusion about the alleged guilt of the several workmen, on little or no evidence, so that the evidence in support of the finding is practically non-existent, or such, that no reasonable man could possibly accept the same. Learned counsel on either side have been at pains to refer elaborately and in detail to the evidence on record in support of their respective contentions, and it becomes necessary to refer to the same.

10. I shall deal with the cases of each of the workmen separately.

I. Shri R. C. Shukla.

11. The charge against this workman is contained in Ext. M/1 dated 28th March 1958. The explanation given by Shri Shukla in answer to the charge, is Ext. M/2 dated 1st April 1958. The record of enquiry into his conduct is Ext. M/3 which contains the several statements, that were recorded by the Enquiry Officer. Ext. M/4 is the report, on the enquiry proceedings, of the Enquiry Officer. Ext. M/5 is the order dated 12/12th September 1958, dismissing Shri Shukla from service in accordance with clause 22 of the Standing Orders. He was directed to hand over charge to another person, and vacate his quarters. It is stated therein, that he had been found guilty of the charges contained in the charge-sheet served on him on 28th March 1958, as per the report of the Enquiry Officer, and that the findings of the Enquiry Officer were accepted.

12. The contention raised before me by learned counsel on behalf of Shri R. C. Shukla is, that the Enquiry Officer's report and findings are absolutely baseless, and vitiated by errors of fact, and in any event are not at all supported by the evidence recorded by him, that the enquiry itself is not a proper and bona fide enquiry, and that in any case, the punishment awarded is excessive, and is not in accordance with clause 22 of the Standing Orders.

According to the allegations in Ext. M/1, on Tuesday of the 25th March, 1958 at about 5.30 P.M. Shri Shukla along with Messrs. B. N. Sharma and Rustam-Khan, and a crowd of about 100, surrounded the Mines Manager Mr. Basu and the Mechanical Engineer Mr. Datta in front of Mohan Hotel at Jamsar, while they were going in a jeep, and demanded immediate settlement of the cases of Shri Faqir Shah, and Shri Mangla, and also of the other items of dispute between the

Union and the management. Shri Shukla further stated, that, if Shri Faqir Shah was not allowed to drive the dumper by the Mechanical Engineer, he would take out the dumper for driving the same by Shri Faqir Shah, and he would see that nobody would stop him. If the management so desired, they could take the help of the police. The Mines Manager pointed out, that Shri Faqir Shah would be allowed to work as Driver B, as demanded, and Shri Mangla would be given acting charge as Driver C. With reference to other items, the Mines Manager replied, that they were being considered. But Shri Shukla was not satisfied with this, but demanded assurance in writing of various matters. Under threat of force he got commitments in writing from the Mines Manager. After this the Welfare Officer arrived on the scene, and he advised the crowd not to adopt these tactics. But Shri Shukla, caught hold of the Welfare Officer by his neck, and Shri Shukla along with Shri Rustam Khan and others assaulted him. The workman was charged with acts amounting to wilful insubordination, fighting, riotous and disorderly behaviour, and threatening and intimidating employees within the mines. He was charged under Standing Order No. 21 sub clause (1), (8), and (16). He was asked to explain, why disciplinary action should not be taken against him.

14. The workman denied the charges against him in Ext. M/2. He stated therein that he was at a loss to understand what lawful orders of his superior he disobeyed, that he was not given any orders at the time, and he was not under any obligation to obey the order of his superior when off duty. He denied, that he had threatened, or intimidated anyone. He denied, that he had caught hold of the Welfare Officer, and assaulted him. He said, that he was harassed for his Union activities.

15. Shri Kalla was appointed originally as the Enquiry Officer, but, on objection being taken, Shri A. K. Mukerjee, the office Superintendent of the office of the Resident Manager, Bikaner, was appointed to hold the enquiry. It is admitted before me in the course of arguments, though it does not appear anywhere on the evidence, that Shri R. C. Shukla has passed the M.Sc. Examination of the Banaras Hindu University in Technology. He was working as a Chemist in the Mines. He was drawing Rs. 195 at the time of removal from service.

16. Now turning to the findings of the Enquiry Officer, firstly, in paragraph 45 of the Enquiry Officer's report, Ext. M/4, it is found, that Shri Shukla was guilty of wilful insubordination. In the previous paragraph it is stated, that nothing had been brought out in the cross-examination of Shri Datta, the Mechanical Engineer especially, that part of it which dealt with Shri Shukla throwing a challenge to him, that Shri Faqir Shah would drive the dumper in spite of his orders, and the management could take the help of the police, if necessary, to stop him from doing so, and that this version receives support from the evidence of Shri D. S. Basu, on whose evidence the Enquiry Officer placed a great deal of reliance because of his impartiality. It may be mentioned here, that Shri D. S. Basu was the Mines Manager at the time of the occurrence but later ceased to be Mines Manager.

17. The evidence of Shri Datta in Ext. M/3 is, that on 25th March, 1958 at about 12 noon, he came to the Manager's Office, and was discussing with him about the newly selected drivers. Shri Basu pointed out, that Shri Shukla had met him and was asking about his decision regarding Shri Faqir Shah. Shri R. C. Shukla came inside the Manager's Office, and during discussions Shri Datta mentioned, that Shri Faqir Shah had not been demoted, nor put off duty, but was kept as a spare driver in the workshop. Shri Shukla was however pressing for the employment of Shri Faqir Shah as a driver of dumper (Avclinc Barford). Shri Shukla further stated, that, if Shri Faqir Shah was not allowed to drive the dumper, he would go to the workshop personally, and take out the dumper for Shri Faqir Shah to drive, and gave a further challenge, that the management should take the help of the police, if necessary, to restrain him. Shri Shukla lost his temper, and asked Shri Basu to settle the matter, and left the Manager's Office, and went away.

18. The evidence of Shri Basu in Ext. M/3B, is that at about 10.30 A.M. he reached his office. Shri Shukla approached him, and said, that, though Shri Faqir Shah had been promoted as Driver B on six months' probation, he was not being allowed to drive the dumper, and, though Shri Mangla had worked as acting driver for nearly 2½ years, somebody else had been given the acting charge. The manager replied, that he would discuss the matter with the Mechanical Engineer, and Shri Shukla went away. Shri Basu sent for the Mechanical Engineer, and was discussing the matter with him. The manager called in Shri Shukla. Then there was hot discussion between the Mechanical Engineer and Shri Shukla. Shri Shukla said, that, if Shri Faqir Shah was not allowed to drive the dumper by the

morning of 26th March, they would all go to the Dumper Shed, and make Shri Faqir Shah drive the dumper. If necessary, they could take police help. Then he went away at about 12-30 P.M. Shri Basu continues that he came back after recess, and had a talk with the Mechanical Engineer at his office. He directed the Mechanical Engineer, Shri Datta, to allow Shri Faqir Shah to drive the dumper from the next day, and also to see that, while acting chance was given to any person his seniority should be the main consideration. Thereafter he went and attended the Canteen Committee Meeting, which ended at about 5 P.M. Then the Mechanical Engineer came to his office, and informed him, that he had made the necessary arrangement, i.e., Shri Faqir Shah was to drive the dumper from the next day, as per the Mines Manager's orders.

19. It will thus be seen, that the alleged challenge which is said to have been thrown out by Shri R. C. Shukla was at about noon on 25th March, 1958, when Shri Datta, and the Mines Manager were present. Shri Shukla went there by invitation. It is important to note, that the throwing out of his challenge at 12 or 12-30 even assuming it is true without admitting it, is not the subject-matter of the charge in Ext. M/1. What is mentioned in Ext. M/1 is, that on Tuesday, the 25th March, 1958, at about 5-20 P.M. Shri Shukla, Shri B. N. Sharma, and others with a crowd of 100 persons surrounded the Mines Manager, and the Mechanical Engineer in front of Mohan Hotel, and demanded redress of certain grievances in connection with the cases of Messrs Faqir Shah and Mangla, and others. It is then, that Shri Shukla is said to have thrown out the challenge, that, if Shri Faqir Shah was not allowed to drive the dumper by the Mechanical Engineer, he would take out the dumper for Shri Faqir Shah to drive, and that the management, if necessary might take the help of the police. According to the evidence of Shri Basu, this alleged challenge was given prior to 12-30 during the day. The Mines Manager does not say a word in his evidence about the alleged challenge having been thrown out during the mass demonstration, when he and others are alleged to have been surrounded at about 5-20 P.M. The workman was never charged with the alleged insubordination, said to have been indulged in by him by reason of the throwing out of the challenge at about noon of that day. Even in the statement of Shri Datta no word was uttered about this alleged challenge, when he gave his evidence about the incident, that took place after 5-15 P.M. on 25th March, 1958.

20. However, the Enquiry Officer adopted an extraordinary procedure, and recorded the supplementary statement of Shri Datta on 25th July, 1958. According to the said statement, at the time when the mob surrounded Shri Datta, and the Mines Manager, Shri R. C. Shukla, Shri B. N. Sharma, and Shri Rustam Khan, who were particularly leading the mob, told them, i.e. himself and the Mines Manager, that if Shri Faqir Shah was not allowed to drive the Aveling Barford dumper they would forcibly enter the workshop, and take out the dumper for Shri Faqir Shah to drive, and they further added, that they might take police help to restrain this. The Enquiry Officer was not at all justified in permitting Shri Datta to make a supplementary statement in order to cover up the deficiency that had been exposed during the cross-examination by Shri Shukla. Shri Shukla did ask the question, what necessity had arisen for this supplementary statement. The answer of Shri Datta was, that during cross-examination certain points had been raised by Shri Shukla, which had not been covered in the original statement, and, therefore, he wanted to clarify the same in the presence of the Enquiry Officer. It is important to note, that the allegations made by Shri Datta in his supplementary statement, that Shri Shukla threw out the challenge, that, if Shri Faqir Shah was not allowed to drive the dumper, he would have it done forcibly, and the management could take the help of the police, is not supported by the evidence of Shri Basu. This does not appear even in the evidence of Shri Kalla, whose evidence is contained in Ext. M/3D, or of the evidence of Shri P. R. Ghatak, the Labour and Welfare Officer. It may however be pointed out, that these persons are said to have come on the scene after the car, in which the Mines Manager, and the Mechanical Engineer, Shri Datta, were sitting, had been surrounded. What is important to note is, that this alleged throwing out of the challenge at about 5-20 P.M. or soon thereafter on the day in question, and on account of which the Enquiry Officer has found Shri Shukla guilty of insubordination, is not at all disclosed in the evidence of Shri Basu, and came out only in the Supplementary statement of Shri Datta, which the Enquiry Officer was not justified in permitting. In fact in the cross-examination of Shri Basu on 23rd June, 1958 (Q. 13) he was asked, whether Shri Shukla used any indecent or abusive language on 25th March, 1958 at about 5-20 P.M. The answer was, that Shri Shukla challenged him between 10-30 A.M. and 12-30 P.M. and did not use any indecent or abusive language towards the Mines Manager at any time on 25th March, 1958. The alleged throwing out of the challenge prior to 12-30 P.M. is not the subject matter of the charge in Ext. M/1. The finding of the Enquiry

Officer, that Shri Shukla was guilty of wilful insubordination, is completely baseless, and is against the evidence.

21. Moreover in answer to the question, whether Shri Shukla, in discharge of his duties as Chemist, took any orders from Shri Datta, the latter's reply was "no". In answer to a further question, whether the Mines Manager gave any orders to Shri Shukla at 12 noon or at 5-30 P.M., the answer of Shri Datta is, that he did not know, and that the Mines Manager alone could explain. In cross-examination Shri Basu replied, (Q. No. 2) on 23rd June, 1958, that prior to 25th March, 1958, Shri Shukla had never mis-behaved with him. In answer to a further question, whether Shri Shukla had ever disobeyed his orders as Mines Manager at Jamsar, the answer was "no". In answer to the question, whether Shri Shukla threatened or intimidated the Mines Manager on 25th March, 1958, or prior thereto, the answer was "no". My attention has not been drawn to any other portion of the evidence of Shri Datta, and Shri D. S. Basu, wherefrom the charge of wilful insubordination can be made out. In my opinion, on the evidence on record, the finding of the Enquiry Officer, that Shri Shukla is guilty of wilful insubordination, is baseless, and un-supportable even on the evidence on behalf of the management.

22. Secondly, with reference to the incident, that took place on the evening of 25th March, 1958, the Enquiry Officer refers to the same in paragraph 46. It is observed, that it was clear from the evidence, that Shri Shukla took a leading part in the demonstration, and that it was he who got Shri Basu to sign the final draft of water supply, and that the most serious matter was the fact, that he assaulted Shri Ghatak, the Welfare Officer. It is further mentioned that, from the evidence of the management's witnesses, Shri Ghatak tried to pacify the mob, that this was considered by Shri Shukla as interference, and that he caught hold of Shri Ghatak's neck by his necktie, after which Shri Ghatak got light beating, and Shri Rustam Khan was seen dealing blows, as proved by the statements of Messrs Ghatak, Datta and Kalla. The Enquiry Officer observed, that Shri Shukla behaved in a riotous and disorderly manner, that he did so in the presence of the Mines Manager, and the Mechanical Engineer, and that this is also insubordination. According to the evidence of Shri Datta, the Mechanical Engineer, at about 5-30 P.M. he along with the Mines Manager, Shri Basu and Shri Bhoor Singh, the Driver of the vehicle, were proceeding towards his bungalow in a jeep. When they came in front of Mohan Hotel, a "mob" consisting of about 100 persons, was coming from the workshop side, by the side of the railway track. They were shouting slogans. Two or three persons suddenly ran towards the jeep, with their hands raised. When they almost reached the jeep, Shri Basu asked Shri Datta, who was driving the vehicle, to stop it. Shri Datta, who was at the steering wheel, stopped the jeep. By that time the whole mob reached and surrounded the jeep. Someone was sitting on the bumper, someone on the bonnet, someone on the foot-board, and someone on the road in front of the jeep. Shri Shukla asked the Mines Manager, what had been done about the case of Shri Faqir Shah. The Mines Manager was in a fix to give any reply on the spot. He told them that Shri Faqir Shah would be allowed to drive the dumper, and Shri Mangla would be put on acting basis as driver. Shri Shukla shouted, that they could not believe the verbal assurance of the Manager and asked the Manager to come down from the jeep, and speak to them. Then Shri Basu came down, and then he had to give a written undertaking, the details of which were given by him to the office. The evidence of Shri Datta, is, that the general attitude of the men assembled there was of an aggressive type. The contention on behalf of the management is, that Shri Shukla led the mob, which consisted of about 100 persons, that they shouted slogans, that they forced the Manager to get down from the jeep, that they intimidated, and threatened him, and forced him to write on a piece of paper certain commitments, and that this amounts to wilful insubordination, and riotous and disorderly behaviour, and intimidation and threats towards a superior officer. The evidence of Shri Datta (Q. No. 71) is, that Shri Shukla was on the left hand side of the jeep, and close to it. In answer to Question No. 72, as to what Shri Shukla said to the Mines Manager, the answer of Shri Datta was that he had not heard word to word, that he was sitting inside the jeep at a distance of 12/15 feet from Shri Shukla, and that the mob was shouting on different issues in an insulting and exciting manner. In answer to Question No. 75, whether Shri Shukla talked to the Mines Manager, the reply was that the mob had come to hear his decision, that the mob became restless, and all started shouting, talking, with threatening words, and the situation became panicky. Shri Datta further replied, that he could not remember the contents of the talk, which Shri Shukla had with the Mines Manager, and that the former alone could explain it. It is further mentioned by Shri Datta (Q. No. 76), that in the beginning of the incident, when Shri Shukla was said to have talked with the

Mines Manager, the Mines Manager was inside the jeep. Shri Datta also made it clear (Q. No. 80), that Shri Shukla did not talk to him at all during the whole of the incident. In answer to a question (Q. No. 82), whether Shri Shukla threatened or intimidated the Mines Manager on that day, the reply was as follows:—

"The mob led by him had threatened the Mines Manager, and whether you had threatened at that moment, that I have not heard with my own ears." In answer to the question, in what manner Shri Shukla led the mob, Shri Datta replied, that they were consulting Shri Shukla, and they were talking with him, and that they came up with their individual demands. In answer to a further question, how the Mines Manager was forced to write on a piece of paper, as alleged, the answer was, that Shri B. N. Sharma was talking and forcing the Mines Manager by way of his talks. In answer to Question No. 87, Shri Datta stated that Messrs Shukla, Rustam Khan, B. C. Sharma, and others present in the mob were supporting Shri B. N. Sharma's demands. From the evidence of Shri Datta, it is not at all possible to hold, that Shri Datta or the Mines Manager were intimidated, or threatened by Shri R. C. Shukla.

23. If we have regard to the evidence of Shri Basu whose evidence the Enquiry Officer has relied upon on account of his impartiality, it is made out that Shri Datta has given a highly coloured version about Mr. Shukla which does not at all receive support from the evidence of the Mines Manager. According to the evidence of Shri Basu, on the evening of 25th March, 1958, the Mechanical Engineer came to his office to inform him, that he had made the necessary arrangements for Shri Faqir Shah to drive the dumper from the next day, as per the Manager's orders. Then Messrs Basu and Datta started for their bungalow at about 5-20 P.M. When they came near Mohan Hotel, a "procession" was coming across the railway track, and signalled them to stop the jeep. In the meantime, the procession came and surrounded the jeep. "They" shouted some slogans. Then "they" asked, why Shri Faqir Shah should not be allowed to drive a dumper. The Manager gave the reply, that he would be allowed to drive the dumper from 26th March, 1958, and that as regards Shri Mangal's case, he would see, that such things did not happen in future. "They" were not satisfied with this reply, and "they" insisted on his coming out of the jeep, and giving in writing these promised things. He had to come out of the jeep, and he was compelled to give in writing the promised things, viz., the commitments set out in paragraph 32 of the Enquiry Officer's report (sheet No. 6). In the meantime Shri Ghatak, the Labour Welfare Officer, came and stated, that as the Mines Manager was giving in writing, they should disperse. Then Shri Shukla asked the Labour Welfare Officer, why he was interfering. The latter replied, that he was talking as Labour Welfare Officer. Then Shri Shukla said, that he had put up with the Labour Welfare Officers' "nuisance behaviour", and caught hold of his tie, and gave a push-cum-below. The Labour Welfare Officer got some light beating from others. It will thus be seen that on the evidence of Shri Basu, a procession of workmen came across the railway track, and signalled them to stop the jeep, in which they were going. He gave orders to stop the jeep. They asked him for certain assurances in writing and he gave them. It was for the Mines Manager to give them or refuse them, but he gave them. It is important to note, that, with reference to Shri Faqir Shah and Shri Mangal he had given already orders earlier in the day at about 12 o'clock, when he told the Mechanical Engineer, that Shri Faqir Shah should be allowed to drive the dumper from the next day, and that acting chance should be given according to seniority. Again it is important to read the undertaking No. 8 given by the Mines Manager. It is mentioned therein that there was a demand for supply of sufficient quantity of water to the workers. The Mines Manager deposes, that regarding this point, he was having quite a lot of argument with Shri B. N. Sharma, who was directing him to write on the above lines. Then the following words occur:—

"I wanted to put in place of "sufficient quantity", "sanctioned quota of water", but he did not agree to this. I called for Shri Shukla, who was standing quite at the back of the gathering, i.e., behind the people talking with me. He came forward and I told him, that it is not possible to write sufficient quantity of water on my part, but he said you write, it will not matter."

The above evidence of Shri Basu shows, that the charge of intimidation, threats, riotous and disorderly behaviour and wilful insubordination, against Shri Shukla in the manner found by the Enquiry Officer, cannot at all be true. According to the evidence of Shri Basu, there was a "procession", which came along

the railway track. The statement of Shri Datta, that Shri Shukla was leading the mob is against the evidence of Shri Basu. The statement in commitment No. 8, shows, that Shri Shukla was quite at the back of the gathering and he was called-forward by the Mines Manager to come to him, and have a talk with him about the supply of water. Again according to the evidence of the Mines Manager, when he appealed to Shri Shukla to stop further deterioration of the situation, there was no untoward incident, and they all dispersed. In fact Shri Shukla helped on disperse the workmen. In answer to Question No. 4, in cross-examination on 23rd June, 1958, whether Shri Shukla threatened or intimidated the Mines Manager on 25th March 1958, or prior to that, the answer was "no". In answer to Question No. 5, whether Shri Shukla forced the Mines Manager to write down the commitments regarding the case of Messrs. Faqir Shah, Mangla, etc., the answer was as follows:—

"You did not say, but you were present when I was compelled to give these commitments in writing."

Again, in answer to Question No. 20, whether Shri Shukla shouted any slogans on that day, the answer of Shri Basu was, that he could not say. The answer to Question No. 21 is, that Shri Shukla asked the people round about Shri Ghatak to leave him, and also further asked them to keep quite. In answer to Question No. 22, the answer is as follows:—

"No you did not talk with me anything except the question of sufficient supply of water to workers."

From the evidence referred to above, it is not possible to come to the conclusion, that the Mines Manager was threatened or intimidated by Shri Shukla or that any force was used towards him, or that he was forced to write down the commitments as a result of riotous or disorderly behaviour or as a result of threats, intimidation, and coercion. According to the evidence of Shri Ghatak, slogans were being shouted at the time. In answer to Question No. 69 he deposes, that he had not marked or interpreted all of them, but some of them were as follows:—

"Zada Pani Deou, Sirki Nahi Milta, Quarter Nahi Milta, Welfare Officer Sahib Ke Pas Janese Woh Hamesha Bolta Quarter Avi Nahi Milaga Badme Ajao Tumara Case Badme Dekhange."

The above slogans voiced the grievances of the workmen. It is not clear from the evidence, that the workers prevented the Mines Manager from proceeding in his jeep. The evidence of Shri Basu is, that as soon as there was a signal to stop the jeep, he asked Shri Datta to stop the jeep, and that no attempt was made to proceed further. From the evidence of Shri Basu, it is clear, that Shri Shukla was quite at the back of the gathering behind the people talking to the Manager. He was not at all leading the mob, as is attempted to be proved by Shri Datta. He also did not utter any threats, as is clear from the evidence of Shri Basu. The only talk, between him and the Manager, was about the question of supply of sufficient water. This talk took place, because Shri Shukla was invited by the Manager to come and speak to him. The conclusion of the Enquiry Officer, that the evidence disclosed that Shri Shukla was taking a leading part in the demonstration, and that he was guilty of riotous and disorderly behaviour, and took part in threats and intimidation, and was also guilty of insubordination, is entirely against the evidence of the Mines Manager himself, and cannot be supported.

24. In this connection it has been argued on behalf of the management, that Shri Basu, was examined as a witness on behalf of Shri Shukla. This is however disputed by Shri Shukla, and he wrote the letter, Ext. W/13, to the Enquiry Officer (12th June 1958). He stated expressly therein, that the Enquiry Officer should not mention false things, and that the management should call Shri Basu as a witness. Apart from this, the Enquiry Officer himself has remarked, that he placed great reliance on the evidence of Shri Basu on account of his impartiality. I have set out the evidence of Shri Basu and in view of his statements it is not possible to support the charge against Shri Shukla in the manner mentioned by the Enquiry Officer.

25. Thirdly, I shall deal with the accusation, that Shri Shukla assaulted Shri Ghatak, the Labour Welfare Officer. If this is true, it would amount to serious misconduct, and no management would be bound to tolerate a workman guilty of assault on their officers. The question however is, whether this charge is proved on the evidence. The finding of the Enquiry Officer is, that Shri Basu

and Shri Datta, and Shri Ghatak tried to pacify the mob, that this was considered by Shri Shukla as interference, that he caught-hold of Shri Ghatak's neck by his necktie, after which Shri Ghatak got light beating, and that Shri Rustam Khan was seen dealing blows as is clear from the statement of Shri Ghatak, Shri Datta, and Shri Kalla. The Enquiry Officer was of the opinion, that this established, that Shri Shukla behaved in a riotous and disordredly manner, and that this also amounted to insubordination, because it was done in the presence of the Mines Manager, and the Mechanical Engineer. This is however denied by Shri Shukla.

26. According to the evidence of Shri Ghatak, on the date of the incident he was in his office. At about 5 P.M. a Chowkidar, Watch & Ward, Shri Hussainia by name came running to him in a perplexed condition, and informed him, that a jeep was surrounded by workmen. He along with Shri Shiv Raj Kalla proceeded to the spot. When he came just near the spot, Shri Kalla left him alone, and went-away towards the direction of the stores. He (Shri Ghatak) went into that mob, and he saw, that Messrs. R. C. Shukla, B. S. Sharma, and Rustam Khan were instigating the workers. He tried to pacify the mob. He told Shri R. C. Shukla and Shri B. N. Sharma, that they should not use coercion and threats. Thereupon Shri R. C. Shukla caught-hold of him by his throat, and later by his tie. He bent down a little to avoid choking and strangling, and immediately Shri Rustam Khan dealt him blows from behind. In answer to question, whether Shri Shukla dealt any blows to him (Q. No. 60) the answer was "none at all". He next states, that Shri Shukla released his hold from the throat, and caught-hold of his tie, and pressed it downwards. He did not make any attempt to disentangle himself from his grip.

27. According to the evidence of Shri Ghatak, Shri Shukla caught him by the throat, and then released his hold on the throat, and caught hold of his tie, and dragged him down. The evidence of Shri Datta is, that when there was hot discussion between Shri P. R. Ghatak and Shri Shukla, the latter suddenly caught-hold of the former's neck with the help of his necktie. Seeing this, other workers also gave one or two blows to Shri Ghatak. Rustam Khan gave a blow. There were some others who gave a kick. In cross-examination Shri Datta stated, that Shri R. C. Shukla did not give any blow to Shri Ghatak. Shri Ghatak was held by his tie for a couple of seconds until he knelt down himself from a blow from Shri Rustam Khan. Shri Datta quite well remembers a word like "gun" being shouted by Shri P. R. Ghatak, when he was taken to the back of the jeep. In answer to Question No. 95, Shri Datta stated, that, when the discussions were going on between Shri Sharma and the Mines Manager, Shri Ghatak was standing in a place about 5 or 6 feet away from Shri R. C. Shukla, and about one foot in front of Shri Rustam Khan.

28. The evidence of Shri Shiv Raj Kalla in Ext. M/3D is, that he and Shri Ghatak went together to the spot in question. They saw a large crowd of workers surrounding the jeep. Shri B. N. Sharma, Shri R. C. Shukla, Shri Rustam Khan, and Shri A. K. Mukerjee were standing. Shri Shukla and Shri Sharma were talking to Shri Basu, who was sitting inside the jeep, in a "demanding tone". Shri Ghatak pointed out to them, that these matters must be discussed in the office. At that time Shri Kalla left towards the railway line, i.e., the route by which he goes. At that time, Shri A. K. Mukerjee shouted "Maro". Immediately Shri R. C. Shukla also uttered similar words, and caught-hold of Shri Ghatak's necktie. When he started towards Shri Ghatak, he heard some people saying that Shri Rustam Khan had dealt blows to Shri Ghatak on his back. Thereafter he left the place. In cross-examination this witness says, that Shri R. C. Shukla also said "Maro". When he was asked a question (No. 5), as to what else Shri R. C. Shukla said, the answer was as follows:—

"Nothing else, and then he caught-hold of the tie of Shri Ghatak."

29. If we turn to the evidence of Shri Basu, his statement is, that Shri Shukla caught-hold of Shri Ghatak by his tie, and gave a push-cum-blows. This contradicts the definite evidence of Shri Ghatak himself, that no blows were given to him by Shri Shukla. According to the evidence of Shri Kalla, Shri Shukla did not catch-hold of Shri Ghatak by his neck or throat, but caught-hold of his tie. Even taking the evidence at its face value, it is perfectly obvious, that Shri Shukla at the worst caught-hold of the tie of Shri Ghatak for two seconds. The evidence, about his being caught-hold of by the neck or throat, or of his having been assaulted by being given a push-cum-blows, is contradictory, and cannot be accepted.

30. In this connection, it may be noticed, that in Question No. 94, Shri Ghatak was asked, whether he had given a Police complaint. He first declined to answer this question, and it was disallowed. Later, when he was asked the same question, his reply was that he was not concerned with any police case, and that he had nothing to say in reply. The finding of the Enquiry Officer, that the workman caught-hold of Shri Ghatak's neck by his necktie, is opposed to the evidence on record. The theory of Shri Ghatak having been assaulted by Shri R. C. Shukla, is not borne out by the evidence on record.

31. It is however argued on behalf of the management, that there is enough and satisfactory proof of the fact, that Shri R. C. Shukla and the other workmen intimidated the Mines Manager, and that they were guilty of riotous and disorderly behaviour and intimidation. Support is sought for this contention on the ground, that a mob of 100 persons surrounded the jeep, in which the Mines Manager, Shri Basu, and the Mechanical Engineer, Shri Datta, were travelling and forced from him certain commitments. Though Shri Datta and the other witnesses of the management called the workmen, who assembled at the time, a "mob", the evidence of Shri Basu is, that there was a "procession" and it came along across the railway track. According to him, there were about 8 or 10 people who talked to him. This is in accordance with the evidence of the defence witnesses, that about 10 people had assembled at the time. Moreover, it is not as though, that Shri Basu was wrongfully restrained from proceeding onwards. According to his evidence, when signs were made to stop his vehicle, he asked Shri Datta to stop it. He further stated, that he did not ask, that the jeep should be started. On the contrary he carried on what he calls "arguments" with Shri B. N. Sharma. According to the evidence of Shri Datta "discussions" took place then. According to the evidence of Shri Ghatak, the workmen were shouting slogans. I have set out the slogans, and they show, that the workmen were voicing their grievances. From the mere fact, that there were some workmen who assembled there, Shri Shukla cannot be held to be guilty of riotous or disorderly behaviour. The decision in Kamleshwar Prasad and Others Vs. State of Bihar (1959 I LLJ 401), is important in this connection. It is laid down at page 405 as follows:—

"Strike is a weapon which may in certain circumstances be used by employees in an industry for the purpose of benefiting themselves by raising their wages or for any other lawful purposes. There is also a right to demonstrate in a lawful manner with respect to employees in industrial undertaking. The freedom guaranteed under Articles 19(1)(a) and 19(1)(c) may include the right to strike and the right to demonstrate so far as the industrial employees are concerned, but the position of Government servants is different."

If, therefore, the employees of an industrial undertaking have the right to have a demonstration in a lawful manner for the purpose of benefiting themselves for raising their wages or for any other lawful purpose, I fail to see how the mere association of the employees can be held to amount to riotous and disorderly behaviour. The slogans, that were being shouted, were peaceful. The workmen wanted, that certain undertakings, given by the manager in the morning, should be put down in writing. The manager consented to put them down in writing. No doubt, he says, that he became panicky, but his state of mind cannot convert a peaceful demonstration into an unlawful one. I have already referred to the evidence, which shows, that he was not intimidated in any manner. He entered into arguments and discussions with the workmen, and the undertakings were put down in writing and some of them had been agreed to earlier. I am quite well aware of the fact, that the use of actual physical violence is not necessary to constitute, riotous and disorderly behaviour or intimidation. But on the facts of the present case, and taking the evidence of Shri Basu, it is not possible to come to the conclusion, that Shri R. C. Shukla is guilty of riotous and disorderly behaviour, intimidation, and uttering of threats.

32. Apart from this, there is evidence on behalf of the workman, which cannot be ignored as has been done by the Enquiry Officer. According to the evidence of Shri Sunil Banerjee, on 25th March, 1958, after office hours, he was going home. A jeep was standing on the road before Mohan Hotel, and the Manager was standing before the jeep, and about 10 people were standing before him. The witness was talking to Shri Chakarwari, who was standing with Shri Shukla outside Mohan Hotel. After a while, the Manager called Shri Shukla outside, and talked to him. Shri Ghatak was then going home, and then he came there, and started saying, that there was no procedure to stop the Manager on his way. Shri Shukla stated to Shri Ghatak, that he had no concern with him, and that he might go. Shri Shukla asked him not to interfere. Shri Shukla told Shri Ghatak

loudly "you go home". At this Shri Ghatak became angry, and said, that Shri Shukla was behaving like an idiot, and said "nonsense", "bastard". Somebody brought Shri Ghatak to the other side of the jeep. The Manager was saying, that he would allow Shri Faqir Shah to drive a dumper. Thereafter the jeep left the place, and the persons dispersed. This witness is working as a clerk in the Bikaner Office of the Company. He makes it clear, in cross examination, that he did not see any "man-handling". Shri C. L. Tak is another witness, and he speaks to the fact Shri Ghatak used words like "bastard, dog, beggars" which attracted the witness's attention. He was very furious, and two persons dragged him out of the crowd. Shri B. C. Verma another witness gives similar evidence as the two others, and says that Shri Ghatak called Shri R. C. Shukla names, like idiot, beggar, bastard, and the like and he also told Shri Shukla, that he did not know to whom he was talking. Both were in tamper. People intervened, and separated Shri Ghatak from the spot. The further evidence of this witness is, that Shri Ghatak told him, that he filed a case because the officers were pressing, and he wanted to serve in the concern. The witnesses were cross examined by Messrs Datta and Ghatak who were witnesses on behalf of the management. It is important to note, that the Enquiry Officer remarks, that these defence witnesses had been cross-examined by the management, and the cross-examination did not bring out anything material. Likewise in paragraph 37 it is remarked, that cross-examination of Shri Shukla by Shri Datta did not bring out, that there was any demotion of the drivers, and that the cross-examination by Shri Ghatak did not bring out anything material. If in the opinion of the Enquiry Officer nothing material emerged from the cross-examination of Shri Shukla and his witnesses, I fail to see how he can ignore the effect of their evidence and find Shri Shukla guilty of the charges against him.

33. The findings of the Enquiry Officer, that Shri Shukla is guilty of the charges against him, are baseless, and vitiated by basic errors of fact, and are opposed to the evidence, especially that of Shri Basu, who, according to him is an impartial witness. At the worst, it can be held to have been proved, that Shri Shukla caught-hold of the tie of Shri Ghatak for two seconds. But this must be considered in connection with the evidence of the defence witnesses that Shri Ghatak used words like idiot, dog, bastard. This cannot amount to misconduct, as to be visited with the punishment of dismissal.

34. Another fact to be considered in this connection is, that Shri Rustam Khan, who, according to the evidence, gave blows to Shri Ghatak, has been let off, with a warning, as can be seen from Ext. M/7, on the ground, that he gave an apology. It is curious, that the management should have been satisfied with a mere apology and let off Shri Rustam Khan, who gave blows to the Labour and Welfare Officer of the Co., but that Shri R. C. Shukla, who is supported to have caught-hold of the tie of Shri Ghatak for two seconds has been punished with dismissal. The difference between the two types of punishment is too obvious to be ignored. There is force in the contention on behalf of the workman, that the management is guilty of unlawful discrimination against Shri Shukla leading to the inference, that the conduct of the management is not *bona fide* and amounts to unfair labour practice and victimisation for union activities.

35. Lastly, attention is drawn to Standing Order 22 of the Company, which shows, that lesser forms of punishment are to be resorted to before the punishment of dismissal is imposed. The contention on behalf of the management is, that Shri R. C. Shukla was guilty of another act of misconduct, in which he had received lesser punishment, and that therefore the punishment of dismissal, that was imposed in connection with the incident on 25th March, 1958, is valid. The contention on behalf of the workman is, that so far as the second charge is concerned, he was not at all guilty of the offence. It would appear, that the workman was accused of having torn off a letter and thrown the pieces in the face of the manager on 2nd July, 1958. It however transpires, that actually the letter was delivered on 3rd July, 1958. The management subsequently changed the date of the occurrence to 3rd July, 1958. It may be mentioned in this connection, that Shri A. K. Mukerjee also was accused of having taken part in this incident, i.e., having taken away the torn pieces, which fell on the ground, when Shri R. C. Shukla tore off the letter. It was found in I. D. No. 245 of 1959, in which Shri A. K. Mukerjee was involved, that, according to the charge-sheet, the incident took place on 2nd June, 1958, that in the examination of Shri Ghosh, the officer of the Company, whose letter was alleged to have been torn, the incident happened on 3rd June, 1958, and that this date was put forward because of the evidence which showed, that the letter had been delivered as appearing from the peon book only on 3rd June, 1958. An attempt was made to explain the discrepancy on the ground of error in giving the date of incident, but this was not accepted, and Shri A. K. Mukerjee was ordered to be re-instated in service, after the setting aside of the order of dismissal. The

same reasoning applies even in the case of Shri Shukla. Therefore, the misconduct, that is complained of on the other occasion turns out to be no misconduct at all, and the lesser punishment on that occasion was not justified. If so, it cannot be held, that the provisions of Standing Order 22 have been complied with.

36. Nextly, the enquiry, that was held by the management, has been attacked as being neither fair nor impartial. It is first urged, that Shri A.K. Mukerjee was not competent to hold the enquiry. He was an Office Superintendent of the office at Bikaner. It is admitted before me, that he and Shri Shukla were in the same grade. It is urged on behalf of the workman, that the enquiry by Shri A. K. Mukerjee is opposed to the provisions of the Standing Orders. The argument on behalf of the management is, that Shri Datta, and the Mines Manager and the Labour and Welfare Officer had to appear as witnesses, and, therefore, the enquiry was entrusted to the office Superintendent. In my opinion, it was not at all desirable, that the office Superintendent should have conducted the enquiry against Shri Shukla, considering his status, and the post, that he held. It would have been very much better if the enquiry had been conducted by the Resident Manager himself. In the decision in Sridharan Motors (1959 I LLJ 380) it is observed at page 386 as follows:—

"It cannot be doubted that if the management had a full time salaried manager and the enquiry had been held by him the workers could not have complained. In most large establishments enquiries into allegations of misconduct by a member of the subordinate staff is held by some one placed above, and, so long as the principles of natural justice are not violated, the person against whom the enquiry is being conducted will not be heard to say that the enquiry is being held by a person in the employment of the management."

It has next been pointed out, that the Enquiry Officer was not justified in permitting Shri S. R. Datta to give a supplementary statement in order to plug the loop-holes in the management's case, and that this really shows, the biased attitude of the Enquiry Officer. This accusation is also not without force. Another fact to be noticed, is that certain questions put to Shri Ghatak were disallowed by the Enquiry Officer on a prior occasion, but subsequently they were permitted to be asked. Even granting, the above defects I do not believe, that any prejudice has been caused by reason of the defects pointed out above. The Enquiry Officer seems to have recorded in full what all was stated at the time of enquiry, but he went wrong in ignoring the evidence, and the admissions in favour of the accused person.

37. Having regard to all the circumstances, of the case, and the evidence on record, I am of opinion, that the finding, that Shri R. C. Shukla was guilty of misconduct in the manner shown in the charge sheet is not justified, is not supported by the evidence on record, that it is baseless, and is vitiated by basic errors of fact. The action of the management, imposing the punishment of dismissal on Shri Shukla, is not *bona fide*, and the punishment of dismissal cannot be allowed to stand.

II. Shri B. N. Sharma.

38. In the second place, taking the case of Shri B. N. Sharma, he is said to have obtained the commitments. Taking the evidence of Shri Basu, it is not possible to up-hold the charge against Shri B. N. Sharma. Regarding paragraph 8 of the commitments, it is mentioned by Shri Basu in his evidence, that about supply of water, he was having a lot of arguments with Shri B. N. Sharma, who was directing him to write on the lines indicated. It was at this juncture that he called Shri Shukla, who was quite at the back of the gathering. Among the commitments, number one refers to the fact of Shri Faqir Shah being allowed to drive the dumpers Nos. 2, 3, and 4 contain directions for giving acting chance whenever it occurred to Messrs Mangla, Rawat Singh, and Rajender Kumar. The evidence of Shri Basu is, that even earlier in the morning he had told Shri Datta, that when acting chances were given to any person, seniority in the line should be the main consideration. No. 5 is to the effect, that tickets of persons, whether working in the workshop or dumpersheds, should be punched. Item No. 6 states, that reply to letters addressed to management should be answered promptly. With reference to Item No. 7 it is stated, that reasons for search of Kumbha Ram's quarter and the findings thereon, should be given. No. 8 deals with the supply of water. From a perusal of the evidence of Shri Basu, it is hardly possible to hold, that the commitments were extracted from the Manager by threats or intimidation or by force or riotous or disorderly behaviour, as to make the workman liable for the punishment of termination of service. The evidence on behalf of the management's witnesses is, that the issues, that were the subject

matter of the commitments, had been referred to the Conciliation Officer. When Shri Basu was questioned about the same by Shri Sharma, his reply was, that he was not definite about the items actually referred to the Conciliation officer, but he thought the case of Messrs Faqir Shah, Rajinder Kumar, and water supply etc. had been referred to the Conciliation Officer. So far as Shri Faqir Shah was concerned, the Manager had already decided in the forenoon to allow him to drive a dumper. So far as Shri Rajinder Kumar is concerned, the commitment was, that he should be made a clerk, because he had been acting as a clerk for nearly 1½ years. This related to the decision of the Manager in the forenoon, that, in giving acting chances, seniority should be taken into account. Regarding water supply, it does not appear from paragraph 8 what exactly was the commitment. It is hardly possible to hold, that Shri B. N. Sharma, or Shri Shukla threatened, or intimidated the Mines Manager in any manner. When he was specifically asked the question, as to how many workers there were before the arrival of Shri P. R. Ghatak at the spot (Q. No. 6), the answer of Shri Basu was, that he could not say the exact number of workers, who talked with him, but the number was not less than 8 to 10. The evidence of the defence witnesses is, that about 5 to 10 persons took part in the talks with the Manager on that day. This would mean that there was no mob of 100 persons, as stated in evidence of Shri Datta. In answer to Question No. 9, Shri Basu replied, that Shri Sharma had been representing the Union, and bringing to his notice the grievances of the workmen. On the evidence of Shri Basu, it is difficult to hold, that Shri Sharma is guilty of the charges against him, as contained in the charge sheet, Ext. M/32, referred to above. The findings of the Enquiry Officer are not supported by the evidence on record, and are baseless, and are vitiated by basic errors of fact, and cannot be sustained.

39. It is further important to note, that in the charge-sheet, Ext. M/32, it is stated, that Shri Sharma said, that, if Shri Faqir Shah was not allowed to drive the dumper by the Mechanical Engineer, he would see, that nobody would stop him, and that the management, if desired, may take the help of the police. Apparently the same allegation as was made against Shri Shukla was made against Shri Sharma also and was imported into the charge-sheet against Shri Sharma also. I have already referred to the evidence in this connection, and found, that no such words were ever uttered even by Shri Shukla himself at the time of the alleged incident. Much less were they used by Shri Sharma, on the evening of 25th March 1958. This really shows, the utter lack of *bona fide* on the part of the management. Taking all circumstances into consideration, I find, that the charges, as contained in the charge-sheet, Ext. M/32 are baseless, and are not supported by the evidence on record, and the action taken by the management is not *bona fide*. The punishment of removal from service imposed on Shri Sharma cannot be sustained.

40. In this connection, I may refer to applications filed on behalf of the management for holding an enquiry into the alleged tampering with certain Standing Orders. According to the case of the workmen, there was no clause as 23(i) in the Standing Orders. The contention on behalf of the management is, that such a clause as 23(i) did exist, and empowered the management to impose the punishment of simple termination of service. The contention on behalf of the management is, that, in accordance with this clause in the Standing Orders, the services of Shri Sharma were terminated, and that such discharge simpliciter cannot be interfered with in this proceeding. It is not necessary for me to go into the question in this proceeding, whether in fact clause 23(i) exists or does not exist in the Standing Orders, or whether there has been any tampering with the original Standing Orders, as has been urged on behalf of the Company. It is sufficient to note, that the charges against the workman, as contained in Ext. M/32 are serious. The management did really proceed to punish Shri Sharma for the alleged misconduct, with which he was charged under Ext. M/32. The termination of service apparently took place because of certain acts of misconduct, which Shri B. N. Sharma was said to have committed. A charge sheet was drawn up and elaborate enquiry was held. On the finding of the Enquiry Officer, that he was guilty of these acts, he was found to be unfit to be continued in service. The termination really amounts to punishment of dismissal. Such termination really carries a stigma, a disqualification or taint of being unfit or unworthy for service. It has got the implication of making Shri Sharma ineligible for further employment. Therefore, even though it is styled termination of service, it is really dismissal from service. Even assuming for a moment that the management passed only an order of simple discharge, in my opinion, the action of the management is not *bona fide*, and cannot be supported.

41. I find, that the order of termination of service passed against Shri B. N. Sharma, is not *bona fide*, that it is unjustified, and that it should be set aside.

III. Shri Jagdish Ram, Sampler.

42. Taking next the case of Shri Jagdish Ram, Sampler, this workman was a Sampler in the Mines. The charge against him is contained in Ext. M/8 dated 2nd July, 1958. It is to the effect, that he caused damage to the work in process. The management's case, is that, on 30th June, 1958 it was reported by Shri Ghulam Shah, Mate, that Shri Jagdish Ram along with Shri Shakoor, one of the Sindri Fertiliser Laboratory Mazdoors, was found mixing one Tagari of sand and extraneous material into the tins containing samples of Gypsum, already collected from the wagons loaded, with Gypsum, at Loading point No. 8 Ext. M/8A is another charge dated 2nd July, 1958. Therein the charge is, that Shri Jagdish Ram, with Shri Shakoor, was found filling up tins containing samples of Gypsum with Tagaries. There is a variation between Ext. M/8 and Ext. M/8A. In Ext. M/8A there is mention of the fact, that Shri Jagdish Ram was found mixing one Tagari of sand and extraneous material in the tins containing the samples of Gypsum, but in Ext. M/8A he is accused of filling up tins containing the samples of Gypsum with Tagaries. The material, with which the samples were mixed, namely, sand and extraneous material as mentioned in Ext. M/8, does not find mention in Ext. M/8A. The explanation of Shri Jagdish Ram is Ext. M/9, wherein he denied the allegations against him. On the other hand, he stated, that he was engaged till about 9:45 A.M. in a conference, that he went to the Loading Point No. 8 at 9:45 A.M., that, by the time he went, the Loading was completed, and that he asked the Sindri Sample Taker on duty to draw the last sample of one of the wagons, which was due. The sample so drawn was put in the tin, which was locked immediately. Shri Jagdish Ram also stated, that a false charge had been preferred against him at the instance of village piece workers to get him out of the way, so that they may succeed in their scheme to have better samples drawn than the actual material despatched. An enquiry was conducted by Shri Shiv Raj Kalla, who was appointed the Enquiry Officer. The findings of the Enquiry Officer are contained in Ext. M/12. Ext. M/13 is the order terminating service as per Standing Order 22, dated 29th August, 1958, on the ground, that he had been found guilty of the charge against him by the Enquiry Officer.

43. The first contention, that has been raised on behalf of the workman, is, that Shri Kalla was not competent to be an Enquiry Officer, because he had filed a criminal complaint against Shri Jagdish Ram. That in fact a criminal complaint had been filed is not denied on behalf of the management. It was certainly unfair on the part of the management to appoint Shri Kalla to be the Enquiry Officer when he had filed a criminal complaint against the workman and Shri Jagdish Ram was entitled to complain, that he would not have a fair hearing at the hands of Shri Kalla.

44. Be this as it may, the contention on behalf of the workman is, that there is no satisfactory proof on behalf of the management establishing that he mixed sand or any other extraneous material or that he permitted this to be done. According to the management's case, on 30th June, 1958, Shri Attar Shah at near about 9 A.M. was going to Quarry No. 8. While he was passing the Loading Point No. 8, he saw Shri Jagdish Ram, Sampler of the Company, and Shri Shakoor, a workman of the Sindri Fertiliser's office, talking near the wagon. At the same time Shri Shakoor brought extraneous material, i.e., sand from the distance of one step in a Tagari, and Shri Jagdish Ram opened the tin, and Shri Shakoor poured the sand in the sample tin. Thereupon Shri Jagdish Ram shut the tin and locked it. Shri Attar Shah saw all this with his own eyes. He reported the matter to Shri Ghulam Shah, and informed him of the same. Shri Ghulam Shah informed this to Shri Ghulam Shah, Labour Mate. Then Shri Ghulam Shah, Labour Mate went to inform Shri Ghosh, the Mines Manager. The Assistant Mines Manager, Shri B. Seshadri, was in the office, and he was informed by the Labour Mate, that sand was mixed in the tin at Loading Point No. 8, and there Shri Attar Shah told them the whole story. The tins were locked and then sent for analysis.

45. On behalf of the management, the reports of the Chemists have been produced in this connection. Ext. M/15 is a copy of the analysis received from Messrs Briggs & Co. Calcutta. Ext. M/14 dated 7th July, 1958 is a copy of the report of the Chemist, Shri B. P. Tiwari. These are relied upon to show, that the disputed samples, that were analysed, were not upto standard.

46. It will thus be seen, that according to management's case, the eye witness is Shri Attar Shah who happened to be one of the Village Piece Workers. It was near about 9 A.M., that the alleged incident took place. The contention on behalf of the workman is, that he was engaged in a Conference in the morning of that day, and that he was able to leave for Loading Point No. 8 at 9.45 A.M., and that it was impossible for him to mix sand and other material in the tins at about 9 A.M., when he was absent from the spot at Loading Point No. 8. According to the evidence of Shri Ghosh in Ext. M/11E, on 30th June 1958 in the morning hours, he had arranged a meeting with the Samplers at his office, with the idea of finding out, what were the causes for short fall in purity in Sindri Despatches. He talked with them upto quarter to 8.30, or quarter to 9 approximately. Thereafter he left the place, and asked the Samplers to go to the Canteen and take tea, and if they got time, they should go back to their respective duties. At about 10 or 10.30 A.M. Shri Sehshadri came and told him, that at Loading Point No. 8 some of the Samplers in collaboration with Sindri people had mixed sand and extraneous material in the sample tins. He and Shri Sehshadri went to the spot, and they were shown the tin, and the tin was taken away. It is thus important to note, that, according to Shri Ghosh, till about 8.45 the Samplers were with him, engaged in a Conference. It is also in his evidence, that he asked the Samplers to take tea in the Canteen, because they complained that they had not enough time to take tea in the morning. In the evidence of Shri Sehshadri it is admitted, that the Samplers complained to him about 10 minutes after the meeting was over, that they were not served with tea by the Canteen Manager. Thereafter, he arranged with the Canteen Supervisor for supply of tea to the Samplers. On behalf of the workman, Shri R. C. Shukla was examined and he spoke to the fact, that it was about 9.15 A.M., that the talks were finished with the Samplers, Shri Ghosh permitted the Samplers to take tea. At about 9.45 A.M. a workman came, and informed Shri Ghosh, that he was wanted on Loading Point No. 8 Shri Sehshadri lock-away Shri Ghosh along with him. Shri Prem Chand, who was assistant Sampler, states in Ext. M/11B, that Shri Jagdish Ram reached the spot of the incident, i.e. Loading Point No. 8, at 9.30 or 9.45 A.M. on 30th June 1958. The evidence does establish the statement of Shri Jagdish Ram in his explanation, that he went to Loading Point No. 8 on the morning of 30th June 1958 at about 9.45 A.M., by which time the wagons had been loaded. It was impossible for Shri Jagdish Ram to have been at the place of incident near about 9 A.M., and to tamper with the samples, as alleged by Shri Attar Shah by opening the locks, and mixing the samples with extraneous material.

47. In this connection I must state, that a clumsy attempt has been made to get over the effect of the evidence, by altering the hour in the deposition of Shri Attar Shah. The deposition of Shri Attar Shah is Ext. M/11A. He is the eye witness, who is said to have witnessed Shri Jagdish Ram tampering with the sample. It is he who is alleged to have informed Shri Gulam Shah, who, in turn, informed Shri Ghulam Shah, Mate, who, in turn, brought Shri Ghosh, the Manager and Assistant Manager, Shri Sehshadri. The evidence of the others is based only on the information conveyed by him. In the statement of Shri Attar Shah Ext. M/11A, the figure, that was originally written, was "9". It was altered into "10" in different ink. Obviously this was done to get-over the above fact about the Conference, as appearing in the evidence of Shri Ghosh, and Shri Sehshadri. That this is an unwarranted alteration, is clear from Ext. M/12, the Enquiry Officer's report, wherein it is stated as follows, in the beginning:—

"The facts of this complaint are as under:—

That on 30th June, 1958 at near about 9 A.M. Shri Attar Shah, s/o Wali Shah of Jalasar was going to Quarry No. 8. While he was passing the Loading Point No. 8, he saw Shri Jagdish Ram Sampler of BGL Company of Jamsar, and Shri Shakoor, Labour of Sindri Fertiliser Office, talking near the wagons, and at the same time Shri Shakoor brought extraneous material, i.e. sand from the distance of one step in a Tagari, and Shri Jagdish Ram opened the tin, and Shri Shakoor poured the sand in the sampled tin, and then Shri Jagdish Ram shut the tin and locked it."

With reference to the contention on behalf of the workman, that he could not have been present at the spot at about 9 A.M. the Enquiry Officer remarks, that Shri Attar Shah was an inhabitant of the village, and did not have a watch, and that he had not the actual time, and that he had no control over the time. These remarks can only be explained on the basis, that the statement of Shri Attar Shah was, that near about 9 A.M. was the time of mixing the sample with the sand. There has been a deliberate attempt to alter the deposition of Shri Attar

Shah, with a view to show, that the incident took place at 10, and not at about 9 A.M., as he actually deposcd. This really casts reflection on the *bona fides* of the action of the management.

48. It is next alleged, that Shri Bhika Ram opened the tins, with the key, that was with him. The evidence discloses, that, when Messrs Sehshadri, Tiwari, and Randev arrived at the spot, Shri Bhika Ram, a workman of the Bikaner Gypsum, was asked to open the lock of the disputed sample tins. The said tins were unlocked, and put into Tagaries. It is also proved, that the Company's locks were put by Shri Bhika Ram. If the tins had been locked by Shri Bhika Ram, and if he came and opened the tins in the presence of Shri Sehshadri and others, it is hardly possible to hold, that Shri Jagdish Ram opened the locks and mixed the samples with sand and other material or allowed the Sindri sampler to mix the same. The Enquiry Officer observes in his report, as follows in paragraph 8—

"Key was with Shri Bhika Ram. It can be given afterwards. From the statement of Shri Bhika Ram it is evident, that both the locks of the tins were opened by the Company's key. This shows, that every mischief can be made by anyone."

If Shri Bhika Ram was the person, who was having the key of the Company's locks, with which the tins were locked, it is not possible to hold, that Shri Jagdish Ram had the opportunity to open the tins and get sand and extraneous material mixed in the sample. There is no proof, that Shri Jagdish Ram obtained the key from Shri Bhika Ram. It is argued on behalf of the workman, that Shri Bhika Ram has stated in his evidence, that the key of the Company's lock was with him on the particular day, whereas the key of the Sindri lock was in the office. It is important to note, that the Enquiry Officer has remarked, that the Sindri Staff also were involved in the mixing. It is quite possible, that Shri Abdul Shakoor or some one else did the mixing, without Shri Jagdish Ram having anything to do with it. Except the evidence of Shri Attar Shah, there is no other direct evidence connecting Jagdish Ram with the alleged mixing of the samples with sand and grit and I have given my reasons for holding that his version is rendered impossible by the other evidence on behalf of the management.

49. Again, it is important to note, that, according to the evidence of Shri Sehshadri, on 30th June, 1958, the day in question Shri Ghulam Shah, Matc, came to his office at about 10, and asked him to go to Loading Point No. 8, to examine the samples drawn. When asked the reason, Shri Ghulam Shah said, that sand had been mixed in the sample tins. Then he and others went to the siding. It is important to note, that he does not say, that Shri Ghulam Shah informed him, that sand had been mixed by Shri Jagdish Ram, or that Shri Attar Shah had told him, that he had seen Shri Jagdish Ram mixing the sand. The evidence of Shri Ghosh, Ext. M/11E is that Shri Sehshadri told him at about 10 or 10.30 A.M., that at Loading Point No. 2 some of the Samplers, in collaboration, with Sindri people had mixed sand in the sample tins. It is no where stated that the name of Shri Jagdish Ram was given as the Sampler, who had got mixed the sand in question or that it had been done in his presence.

50. Another point, that has been urged on behalf of the workman, is that the result of the analysis, relied upon on behalf of the management, cannot be sustained. The analysis is said to have been made in Bikaner in Sindri Fertiliser Laboratories. The report or evidence of Shri Bhandari, the Sindri Chemist, is not forthcoming, and we have only the analysis report given by Shri B. P. Tiwari of the Company. It is also urged, that analysis, that was done by Messrs Briggs & Co. Calcutta, is not of any use, because there was no seal on the samples analysed by them.

51. It is argued on behalf of the management, that Shri Jagdish Ram is trying to escape responsibility by unjustifiably pleading that Attar Shah a village piece worker is giving false evidence, and that the Village Piece Workers had threatened to get him into trouble, because their remuneration was lowered, and that this is not really so. According to the evidence of Shri Ghosh, the villagers in a group used to come and complain, that amounts were deducted from their bills for short fall of purity. There is no doubt, that the village piece workers did have a grouse in this matter. It is however argued, that Shri Jagdish Ram had threatened them that he would lower the purity of the Gypsum, by drawing incorrect samples on Loading Point No. 8, and would teach the villagers how they would stand this. According to the evidence of Shri Ghosh, Shri Jagdish Ram had complained to him, that Shri Rahim Shah had threatened him (Shri Jagdish Ram) that he would be beaten, if he did not draw proper sample. When Shri Ghosh made enquiries about it, he came to know, that once in the Canteen

Shri Jagdish Ram had uttered the threat, that he would lower down the purity by drawing incorrect samples at Loading Point No. 8, and would teach the villagers how they would stand this. At this Shri Rahim Shah told him, that, if he did so, he would not leave him. In answer to a further question in cross-examination about the threat uttered by Shri Jagdish Ram the answer of Shri Ghosh was, that he was given the information by Shri K. K. Roy. This does not however receive support from the evidence of Shri K. K. Roy. In answer to a question, whether on the date of the Canteen incident Shri Jagdish Ram threw out a challenge, that he would lower down the purity at Loading Point No. 8, by drawing incorrect samples, from wagons loaded by the Village Piece Workers, his answer was, that Shri Jagdish Ram replied to Shri Rahim Shah, that the material being raised at present by the Village Piece Workers was not more than 80 per cent. and nothing else. This statement of Shri Roy does not support the evidence of Shri Ghosh. There is no force in the contention on behalf of the management, that Shri Jagdish Ram uttered threats against the Village Piece Workers, and, therefore, he had a motive to mix sand and other material with the samples, of Gypsum. On the contrary, there is greater reason for holding, that Shri Attar Shah, Shri Rahim Shah, and other Village Piece Workers had a grouse against Shri Jagdish Ram, because, according to him, the purity of the material raised by them was not more than 80 per cent., and this resulted in reduction of the remuneration, payable to them. It is against this background we have to assess the value of the evidence of Shri Attar Shah, the alleged eye witness.

52. Taking all circumstances into consideration, and the evidence of the management's witnesses on record, it is not possible to come to the conclusion, that Shri Jagdish Ram mixed the sample with sand and extraneous material on the day in question or that in his presence such mixing took place. This is a finding, which is baseless, and which cannot be supported by the material on record. The findings of the Enquiry Officer are vitiated by basic errors of fact, and by ignoring the various circumstances arising in the evidence, of the management's witnesses. Shri Jagdish Ram is not guilty of the charge against him, and the removal from service is unjustified, and must be set aside. The action, taken by the management, is not *bona fide*, and cannot be affirmed.

IV. Shri Satya Narain.

53. The charge against this workman is contained in Ext. M/18, dated 30th August 1958. It is alleged, therein, that on 25th August 1958, dumper No. 15, which was being driven by him, got damaged due to his toe chaining dumper No. 13 in a wrong manner, that on 26th August 1958 in the second shift he was driving the same vehicle, and that on the 27th he again got the dumper involved in another accident, and caused further damage to the same. The explanation of the driver is Ext. M/19. According to the workman, dumper No. 15 was standing on a slope. He did toe chaining to dumper No. 13, and tried to start dumper No. 15 backward, but it started moving forward. When he removed the brake, and tried to engage the back gear, the vehicle, which was standing on the slope at once went forward, and bumped into dumper No. 13, which was hardly 3/4 feet away. He took all the necessary precautions, and it was not due to his negligence, that the dumper moved down the slope. The Mechanical Engineer was requested to visit the spot on the same night, but he stated, that there was no necessity to do so. This workmen was served with the order Ext. M/23A, that he was found guilty of causing damage to the property of the Company on 25th August 1958. He was dismissed from service with effect from 29th October 1958. The charge of his having caused damage on 26th August 1958 was dropped. Ext. M/29 is filed as the history sheet of this workman, showing, that on prior occasions he had been warned for misconduct.

54. The contention on behalf of the workman is, that it was due to sheer accident, that dumper No. 15 moved forward down the slope, and hit dumper No. 13 which was loaded and to which it was toe chained. The witnesses examined on behalf of the management were Messrs. Moolchand, Ramchand, and B. Shee. The two former witnesses stated that they could not say, how the dumper rolled on and hit the dumper, in which Shri Moolchand was working. The Enquiry Officer finds that it is evident from the enquiry, that, if Shri Satya Narain had been driving the dumper No. 15 in a proper manner, there would have been no damage on 25th August 1958. This finding is opposed to the evidence on record, and is baseless. The Enquiry Officer does not find, how it was that the accident could have been avoided. The finding ignores the fact, that Dumper No. 15 was on a slope, which is admitted by the witnesses on behalf of the management. The workman, in order to engage the rear gear, released the brake, and Dumper No. 15 rolled forward, and bumped into Dumper No. 13,

which was at a short distance, by accident. The argument on behalf of the management, that, if he had applied the brake, Shri Satya Narain, could have avoided the accident, is not tenable, in view of the very short distance between the two, and in view of the fact, that the Dumper No. 15 was standing on a slope. It is significant to note, that the Mechanical Engineer did not examine the vehicle when the matter was immediately reported to him. The finding of the Enquiry Officer is not supported by the evidence on record. The finding of guilt is baseless, and the punishment of dismissal must be set aside.

55. The question is about the relief, to which the several workmen are entitled. I have found above, that the action taken by the management against all the workmen is not justified on the evidence, and that the orders of termination of service passed against them must be set aside. On the facts established in this proceeding, I am not able to hold, that the relief of re-instatement should be denied to the workmen. I find, that all the four workmen are entitled to be reinstated in service, and restored to their old or equivalent posts on the same terms and conditions as before.

56. With reference to the claim for back wages, in view of the time, that has elapsed, it is sufficient to award six months emoluments as compensation for forced unemployment.

57. In the result, an award is passed as follows:—

- (i) The orders of termination of service passed against the four workmen mentioned in the order of reference, whether by way of dismissal, or discharge, or termination of service, are hereby set aside.
- (ii) The management of Bikaner Gypsums Limited shall re-instate in service all the four workmen referred to above; and restore them to their old posts or equivalent posts on the same terms and conditions of service as before, within two weeks from the date when this award becomes enforceable.
- (iii) On re-instatement, the said workmen shall be entitled to continuity of service, and the period between the date of termination of service and the date of re-instatement shall not operate as a break in continuity of service.
- (iv) The management of Bikaner Gypsums Limited shall also pay to each of the several workmen, towards compensation for forced unemployment, six months emoluments, at the rate at which they were being drawn, at the time of termination of service, and such emoluments shall include, not only basic wages, but also other money allowances that were being drawn by them month to month.
- (v) There will be no order as to costs.

(Forty-eight pages).

The 13th October, 1959.

E. KRISHNA MURTI,

Central Government Industrial Tribunal,
Delhi,

[No. LRII-64(14)58-III.]

ORDER

New Delhi, the 3rd November 1959

S.O. 2483.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the National and Grindlays Bank Limited, Chandni Chowk, Delhi, and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Delhi, constituted under section 7A of the said Act.

SCHEDULE

- (i) Whether there was an agreement between the National and Grindlays Bank Ltd., and their employees as evidenced by the letters dated 28th June, 1954 written by the Secretary, National and Grindlays Bank Employees' Union and the Manager of the Bank dated 5th July, 1954 respectively to the effect—(1) that no adverse remarks would be made in the personal files (service books) of the employees without permitting the employees concerned an opportunity to defend themselves and have the benefit of a regular enquiry into the case; and (2) where such an opportunity has not been afforded previous remarks so made stand expunged.
- (ii) If the answer to (i) above is in the affirmative whether the action of the bank in communicating adverse remarks recorded in the course of the annual reports to their workmen without following the terms of the agreement mentioned above is in order.
- (iii) Whether the disciplinary proceedings taken against 6 employees of the Bank, namely, Sarvash-i Prem, Kishan Khanna, Rajinder Lal Syal, Inder Narain Kapoor, P. L. Chakrawarti, Devi Pershad Srivastava and Lajpat Rai Malhotra, resulting in their dismissal were in accordance with law and whether the initiation of the said proceedings and the dismissal of the said employees are valid and justified and if the same be not valid and justified to what relief are the said employees entitled?
- (iv) Whether the Bank is justified in not making an enquiry against the Manager and the Accountant in accordance with the provisions of Paragraph 517 of the Award of the All-India Industrial Tribunal (Bank Disputes) constituted by the notification of the Government of India in the Ministry of Labour No. S. R. O. 35, dated the 5th January, 1952, as modified by the decision of the Labour Appellate Tribunal in the manner referred to in section 3 of the Industrial Disputes (Banking Companies) Decision Act, 1955, (41 of 1955). If the answer is in the affirmative, to what relief are the workmen entitled?

[No. LR-II-10(57)/59.]

TEJA SINGH SAHNI, Dy. Secy.

CORRIGENDUM

New Delhi, the 3rd November 1959

S.O. 2484.—In the notification of the Government of India in the Ministry of Labour and Employment No. L.W.I(I)6(9)/59(1), dated the 1st October, 1959, revising minimum rates of wages under the Minimum Wages Act, 1948 (11 of 1948), published at pages 2893 to 2896 of the Gazette of India, Part II, Section 8(ii) dated the 10th October, 1959, in the Annexure for the existing entries under the sub-heading "Semi-skilled", under (e) Indore—(Class B Area)" occurring under the main heading "2. All India Radio", read:—

"Blacksmith—Class II Rs. 3·50".

2. In the notification of the Government of India in the Ministry of Labour and Employment No. LWI(I) 6(9) (ii)/59, dated the 1st October, 1959, fixing minimum rates of wages under the Minimum Wages Act, 1948 (11 of 1948), published at page 2896 of the Gazetteer of India, Part II, Section 3(ii), dated the 10th October, 1959, in the Annexure, for the existing entry against item 2 of para 2, read:—

“2. Male labour for all sorts of unskilled operations. Rs. 2.00”.

[No. LWI(I) 6(9)/59(ii).]

K. D. HAJELA, Under Secy.

